

SIMPLIFIED USOOL  
FOR UNDERSTANDING  
THE ISSUE OF HUKM  
AND TAHAKUM



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مفتية  
النوابة

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*In The Name Of Allah The Most Merciful, The Most Gracious*

All praise is due to Allah, Lord of all creation, and may blessings and peace be upon His trustworthy Messenger, and upon his family and companions, altogether. To proceed:

This is an attempt to summarize the chapter on the issues of legislation—“ruling and arbitration”—and to clarify general guidelines that aid the Sunni monotheist in comprehending it, without negating the need, of course, for studying the details of the matter in their proper sources.

We must know, before anything else, that understanding the reasons for revelation and consistently studying the transmitted exegetical reports (āthār) is a fundamental pillar in learning this specific issue and in learning all other aspects of the religion. Concerning this, al-Ḍaḥḥāk—may Allah have mercy on him—said in his explanation of Allah’s statement:

يُؤْتِي الْحِكْمَةَ مَنْ يَشَاءُ ۚ

“He grants wisdom to whom He wills” [Surah al-Baqarah 2:269]: “(It is) the Qur’an and understanding it.” And he also said, “In the Qur’an there are one hundred and nine abrogating and abrogated verses, and one thousand verses of lawful and unlawful matters. It is not permissible for believers to neglect them until they learn them and thus teach them. Do not be like the people of Nahrawān: they interpreted certain verses of the Qur’an—revealed about the People of the Book—as if they were about the people of the Qiblah (i.e., Muslims). They were ignorant of the reason for their revelation; so they shed blood, accused us of misguidance, and plundered wealth. So, you must acquire knowledge of the Qur’an, for anyone who knows why it was revealed will never disagree about any part of it; he will benefit and cause others to benefit by it.”<sup>1</sup>

Even though al-Ḍaḥḥāk presented this comment as a criticism of the Khawārij, knowledge of the reasons for revelation protects one from two extremes: negligence and excess. Once we understand this, it becomes necessary for the student of this subject to frequently consult the transmitted exegetical reports related to this area. These have been largely compiled in the book al-Mufīd with mention of the fundamental principles and their subdivisions, so the student of knowledge should refer back to it, for it suffices by compiling these reports. Whoever desires more detail should also consult the exegetical works based on transmitted reports (tafāsīr athariyyah), as well as books on the sciences of the Qur’an that address this topic—such as Aḥkām al-Qur’ān by Qāḍī Ismā‘īl ibn Ishāq al-Jahḍamī (may Allah have mercy on him).

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<sup>1</sup> Tafsīr by al-Tha‘labī (7/306).

However, before clarifying the matter itself, the Sunni monotheist must first establish a number of key points.

# The First Principle: Definition of Sharia, and What is the Sharia Referred to in the Context of Ruling and Arbitration?

## Sharia in the Linguistic Sense:

Khalil, may Allah have mercy on him, said:

والشريعة والمشرعة: موضع على شاطئ البحر، أو في البحر يُهَيَّأُ لشرب الدواب، والجميع الشرائع والمشارع. وقال: إبل شُرُوع إذا كانت تشرب. ودار شارعة، ومترل شارع: إذا كان قد شرع على طريق نافذ، والجميع: الشوارع. ويجيء في الشعر الشارع اسماً لمشرعة الماء

"Ash-Sharia and Al-Mashra'a refer to a place on the seashore or in the sea prepared for animals to drink, and the plural is Ash-Shara'i' and Al-Mashari'. He also said: 'Camels are described as Shuru' if they drink from it.' A house is described as Shari'a, and a path as Shari', if it is clear and accessible. The plural is Ash-Shawari'. In poetry, Ash-Shari' is used as a name for a watering place."<sup>2</sup>

In "Jamharat al-Lugha":

ودور شوارع: على نهج واضح

"Houses described as Shawari' are on a clear path."<sup>3</sup>

From the totality of what is mentioned in the lexicons, it appears that Sharia refers to a clear, apparent, and accessible path available to all people. This includes the road (Ash-Shari') and the watering place for camels (Mashra'at al-Ibil), from which all people come to draw water.

As is the rule with linguistic meanings: they are observed in the legal (Sharia) meanings, but they are not used as the primary interpretation. This will be observed in the legal definition of Sharia.

## In the Legal Sense

Sharia is defined by Qatadah as: "It is the commands and prohibitions of Allah, His obligations, and His legal punishments (hudud)."

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<sup>2</sup> "Al-Ayn": (1/253).

<sup>3</sup> "Jamharat al-Lugha": (2/727).

روى الطبري عن قتادة: قوله : " ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا " [سورة الجاثية: ١٨]، والشريعة: الفرائض والحدود، والأمر (والنهي).

Qatadah said, citing the verse: "Then We put you, [O Muhammad], on a clear way (Sharia) of the matter; so follow it." [Surah Al-Jathiya: 18]. And the Sharia is the obligations (al-fara'id/al-wajibat), legal punishments (hudud), commands (al-amr), and prohibitions (al-nahy').<sup>4</sup>

" وجاء عن أبي ذر رَضِيَ اللهُ عَنْهُ أَنَّهُ قَالَ

The narration from Abu Dharr (may Allah be pleased with him) states:

إِنَّ اللَّهَ تَعَالَى بَنَى دِينَهُ عَلَى أَرْبَعَةِ أَرْكَانٍ، فَمَنْ صَبَرَ عَلَيْهِمْ وَلَمْ يَعْمَلْ بِهِمْ؛ لَقِيَ اللَّهَ مِنَ الْفَاسِقِينَ، " :

"Indeed, Allah Almighty has built His religion upon four pillars. Whoever endures them patiently but does not act upon them will meet Allah among the sinners."

قِيلَ: وَمَا هُنَّ يَا أَبَا ذَرٍّ؟

It was asked, "What are they, O Abu Dharr?"

He replied:

قَالَ: يُسَلِّمُ حَلَالُ اللَّهِ إِلَهُ، وَحَرَامُ اللَّهِ إِلَهُ، وَأَمْرُ اللَّهِ إِلَهُ، وَنَهْيُ اللَّهِ إِلَهُ، لَا يُؤْتَمَنُ عَلَيْهِمْ إِلَّا اللَّهُ

"To submit that: what is lawful belongs to Allah, what is unlawful belongs to Allah, the command belongs to Allah, and the prohibition belongs to Allah. No one is entrusted with them except Allah."<sup>5</sup>

If you understand this, O monotheistic Sunni, then know that the Sharia in this regard is the religion— what pertains to the lawful and unlawful, the legal punishments (hudud) and obligations, and the commands and prohibitions, not just any legislation or introduction.

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<sup>4</sup> "Jami' al-Bayan" by At-Tabari: (21/85).

<sup>5</sup> Tafsir al-Qur'an by Ibn Kathir (7/246), published by Al-Kutub Al-Ilmiyyah.

## The Second Principle: What is a Tāghūt sharia?

Ibn Abi Hatim narrated from Al-Dhahhak in his interpretation of Allah's statement:

﴿وَمَنْ يَقُلْ مِنْهُمْ إِنِّي إِلَهٌ مِثْلُ دُونِهِ فَأُولَٰئِكَ نَجْزِيهِمْ جَهَنَّمَ ۚ كَذَٰلِكَ نَجْزِي الظَّالِمِينَ﴾

"And whoever among them says: 'Indeed, I am a God besides Him,' then We will recompense him with Hell. Thus do We recompense the wrongdoers."

— Surah Al-Anbiya: 29

Al-Dhahhak said: "And whoever among them" refers to the angels. He continued: "None of the angels ever said this except Iblis, who called for the worship of himself and legislated disbelief."<sup>6</sup>

From Al-Dhahhak's narration (may Allah have mercy on him), we understand that among the types of Tāghūt (false deities) is one who legislates disbelief. So, what is the legislation of disbelief?

Thus, a Tāghūt Sharia is any legislation that challenges Allah's Lordship by incorporating a doctrine of disbelief, such as:

- Establishing principles like freedom of belief that contradict Islamic monotheism.
- Permitting what Allah has forbidden or forbidding what Allah has permitted.
- Rejecting or criminalizing the obligations and legal punishments (hudud) set by Allah.
- Denying any ruling from Allah.
- Establishing a ruling that contradicts divine revelation and attributing it to Allah, as the Jews did.

It is not necessary for all these conditions to be met; rather, even a single one is sufficient for a Sharia to be considered Tāghūt.

This definition is straightforward, but it requires careful understanding and explanation. It must be understood that each of the actions mentioned in the definition is, in itself, a cause of disbelief, and it is not required that all be committed simultaneously.

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<sup>6</sup> Tafsir Ibn Abi Hatim (8/2450).

## The Legal Basis for Calling This sharia “Tāghūt”

Referring to the previously described sharia as a Tāghūt sharia is a legitimate Sharia-based classification. This is because when we turn to the scholars of Hadith in their interpretations, we find that they identified certain individuals who legislated such actions (e.g., forbidding what is lawful...) as symbols of Tāghūt. These scholars used the term Tāghūt in their tafsir (Qur'anic exegesis) to describe such figures in various places in the Qur'an.

For example, Imam Yahya bin Sallam (may Allah have mercy on him) stated in his book Al-Tasārīf:

الوجه الثالث: الطاغوت يعني به كعب بن الأشرف اليهودي وذلك قوله في البقرة: {وَالَّذِينَ كَفَرُوا أَوْلِيَاؤُهُمُ الطَّاغُوتُ} يعني كعب بن الأشرف، {يُخْرِجُونَهُمْ مِنَ النُّورِ إِلَى الظُّلُمَاتِ} . ومثلها في النساء حيث يقول: {الَّذِينَ أُوتُوا نَصِيبًا مِّنَ الْكِتَابِ يُؤْمِنُونَ بِالْجِبْتِ وَالطَّاغُوتِ} يعني كعب بن الأشرف. وقال أيضا فيها: {يُرِيدُونَ أَن يُتَحَاكَمُوا إِلَى الطَّاغُوتِ} يعني كعب بن الأشرف.

"The third interpretation of Tāghūt refers to Ka'b ibn Al-Ashraf, the Jew."

He explained the verse:

وَالَّذِينَ كَفَرُوا أَوْلِيَاؤُهُمُ الطَّاغُوتُ

"And those who disbelieve— their allies are the Tāghūt..." (Surah Al-Baqarah: 257)

as referring to Ka'b ibn Al-Ashraf,

يُخْرِجُونَهُمْ مِنَ النُّورِ إِلَى الظُّلُمَاتِ

who led people from light into darkness.

Similarly, in Surah Al-Nisa', Allah says:

الَّذِينَ أُوتُوا نَصِيبًا مِّنَ الْكِتَابِ يُؤْمِنُونَ بِالْجِبْتِ وَالطَّاغُوتِ

"Those who were given a portion of the Scripture believe in Al-Jibt and Al-Tāghūt." (Surah Al-Nisa: 51)

Again, he explained that this referred to Ka'b ibn Al-Ashraf.

Additionally, regarding the verse:

يُرِيدُونَ أَنْ يُتَحَاكَمُوا إِلَى الطَّاغُوتِ

"They wish to refer legislation to Tāghūt..." (Surah Al-Nisa: 60)

He interpreted this as referring to Ka'b ibn Al-Ashraf as well.<sup>7</sup>

Hence, Ka'b ibn Al-Ashraf, along with other Jewish rabbis from the Nadir tribe, enacted legislation based on disbelief. As a result, several verses in Surahs Al-Baqarah, Al-Nisa', and Al-Ma'idah were revealed concerning their actions.

These scholars permitted for their people what Allah had forbidden and forbade what Allah had permitted, and their followers obeyed them, effectively taking them as Lords besides Allah. This act was considered shirk (polytheism) in obedience.

عن الربيع أنه قال:

Regarding this, Al-Rabi' (may Allah have mercy on him) said:

قلت لأبي العالية كيف كانت تلك الربوبية في بني إسرائيل؟ :

"I asked Abu Al-'Aliyah, 'How did this form of Lordship exist among the Children of Israel?'"

He replied:

قال قال: كانت الربوبية وجدوا في كتاب الله ما أمروا به وما نُهوا عنه؛ فقالوا: لن يسبق أحبارنا بشيء فما أمرونا به اتئمرنا وما نهونا عنه انتهينا لقولهم، فاستنصحو الرجال ونبذوا كتاب الله وراء ظهورهم

"It was a form of Lordship where they found in the Book of Allah what they were commanded and forbidden from, but they said: 'Our rabbis will not be outdone in anything.' So, whatever their rabbis commanded, they obeyed, and whatever they forbade, they abstained from, following their sayings. They sought counsel from men and cast aside the Book of Allah behind their backs."<sup>8</sup>

The Prophet (peace and blessings be upon him) clarified that the act of worship performed by the followers of rabbis and monks was not in the form of prayer or fasting directed toward them, but rather in associating them with Allah in obedience.

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<sup>7</sup> Al-Tasārif p.209

<sup>8</sup> Tafsir Al-Tha'alibi (13/307).



This is demonstrated in a hadith narrated by At-Tabari in his Tafsir, from 'Adi ibn Hatim, who said:

سمعت رسول الله صلى الله عليه وسلم يقرأ "سورة براءة"، فلما قرأ

"I heard the Messenger of Allah (peace and blessings be upon him) reciting Surah At-Tawbah, and when he reached the verse:

اتَّخَذُوا أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِّن دُونِ اللَّهِ

'They took their rabbis and monks as lords besides Allah.' (Surah At-Tawbah: 31)

قلت: يا رسول الله، إما إنهم لم يكونوا يصلون لهم

I said: 'O Messenger of Allah, but they did not worship them!'

The Prophet (peace be upon him) replied:

قال: صدقت، ولكن كانوا يُحِلُّونَ لهم ما حَرَّمَ الله فيستحلُّونه، ويحَرِّمونَ ما أَحَلَّ الله لهم فيحرِّمونه

'Indeed, they did not, but they permitted for them what Allah had forbidden, and so they deemed it lawful, and they forbade what Allah had permitted, and so they deemed it unlawful.'"

Similarly, it is narrated from Abu Al-Bakhtari regarding the same verse (Surah At-Tawbah: 31):

قال: ثنا جريرٌ وابنُ فضَّيلٍ، عن عطاءٍ، عن أبي النخترى: (اتَّخَذُوا أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِّن دُونِ اللَّهِ). قال: انطلقوا إلى حلال الله فجعلوه حراماً، وانطلقوا إلى حرام الله فجعلوه حلالاً، فأطاعوهم في ذلك. فجعل الله طاعتهم عبادتهم، ولو قالوا لهم: اعبُدونا. لم يفعلوا

"They turned to what Allah had made lawful and declared it unlawful, and they turned to what Allah had made unlawful and declared it lawful. Their people obeyed them in this, so Allah considered their obedience as their worship. Had their rabbis and monks said to them, 'Worship us,' they would not have done so."<sup>9</sup>

One of the actions committed by these religious leaders was rejecting what Allah had revealed regarding stoning (for adultery) and qisas (legal retribution in cases of murder). This is documented in narrations recorded by At-Tabari, including reports from Abu Huraira and Ibn Abbas, which describe how they refused to accept the ruling of stoning.

Furthermore, Qatadah and others have explained that they rejected qisas (retaliation in cases of murder) as well.

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<sup>9</sup> Tafsir At-Tabari (11/418).

This is reflected in the interpretation of the Qur'anic verse:

إِنْ أُوتِيتُمْ هَذَا فَخُذُوهُ وَإِنْ لَمْ تُؤْتَوْهُ فَاحْذَرُوا<sup>٤</sup>

"If you are given this, take it, but if you are not given it, then beware!" (Surah Al-Ma'idah: 41)

This verse refers to their approach:

If they found in the Prophet's ruling a lighter punishment than what was in the Torah (such as stoning and qisas), they accepted it.

But if the ruling was in accordance with the Torah, they planned to reject and oppose it, as expressed in their statement: "Then beware!"

The Jews not only denied what Allah had revealed regarding stoning (rajm), but they also agreed upon an alternative ruling and falsely attributed it to Allah. Before citing evidence for this, it is important to clarify why, in our definition of Tāghūt sharia, we emphasized the idea of legislative replacement (tabdīl al-sharī'ah) followed by its attribution to Allah. Not every deviation from the divine Sharia that is falsely ascribed to Allah is considered disbelief (kufr). Some misguided religious innovations (bid'ah) are sinful but not disbelief, such as reciting the Qur'an in unison or collective remembrance (dhikr) gatherings, which occurred in Iraq during the Rashidun Caliphate and were rejected by Ibn Mas'ud and Abu Musa al-Ash'ari, yet they did not declare them disbelievers.

The difference between legislative replacement falsely attributed to Allah (tabdīl) and misguided religious innovation practiced as an act of devotion (bid'ah) is that the first completely nullifies and erases Allah's ruling, while the second does not necessarily replace the fundamental divine act of worship. For example, the Jews replacing stoning (rajm) with flogging and blackening the face (tatbiyah wa al-tahmīm) abolished the ruling of rajm entirely, whereas a sinful innovation in collective dhikr does not nullify the remembrance of Allah (dhikr) or the recitation of the Qur'an, even if it is an incorrect practice.

١٨٥٢٥ - حَدَّثَنَا أَبُو مُعَاوِيَةَ، حَدَّثَنَا الْأَعْمَشُ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ، قَالَ: مَرَّ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، يَهُودِيٌّ مُحَمَّمٌ (١) مَجْلُودٌ، فَدَعَاَهُمْ، فَقَالَ: " أَهَكَذَا تَجِدُونَ حَدَّ الزَّانِي فِي كِتَابِكُمْ؟ " فَقَالُوا: نَعَمْ. قَالَ: فَدَعَا رَجُلًا مِنْ عُلَمَائِهِمْ، فَقَالَ: " أَنْشُدْكَ بِاللهِ الَّذِي أَنْزَلَ التَّوْرَةَ عَلَى مُوسَى، أَهَكَذَا تَجِدُونَ حَدَّ الزَّانِي فِي كِتَابِكُمْ؟ " فَقَالَ: لَا وَاللَّهِ، وَلَوْ لَا أَنَّكَ أَنْشَدْتَنِي بِهَذَا لَمْ أَخْبِرْكَ، نَجِدُ حَدَّ الزَّانِي (٢) فِي كِتَابِنَا الرَّجْمَ، وَلَكِنَّهُ كَثُرَ فِي أَشْرَافِنَا، فَكُنَّا إِذَا أَخَذْنَا الشَّرِيفَ، تَرَكْنَاهُ، وَإِذَا أَخَذْنَا الضَّعِيفَ، أَقْمَنَّا عَلَيْهِ الْحَدَّ، فَقُلْنَا: نَعَالُوا حَتَّى نَجْعَلَ شَيْئًا نَقِيمُهُ عَلَى الشَّرِيفِ وَالْوَضِيعِ، فَاجْتَمَعْنَا عَلَى النَّحْمِيمِ (٣) وَالْجُلْدِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " اللَّهُمَّ إِنِّي أَوَّلُ مَنْ أَحْيَا أَمْرَكَ إِذْ أَمَاتُوهُ "

Imam Ahmad recorded in his Musnad a narration from Al-Bara' ibn 'Azib (may Allah be pleased with him), who said: "A Jew who had been flogged and his face blackened (tatbiyah) was brought past the Messenger of Allah (peace and blessings be upon him). The Prophet called them (the Jews) and asked: 'Is this the punishment for adultery that you find in your Book?' They replied: 'Yes.' Then the Prophet called one of their scholars and said: 'I ask you by Allah, who revealed the Torah to Musa, is this the punishment for adultery in your Book?' He replied: 'No, by Allah! Had you not asked me in this manner, I would not have told you. We find the punishment for adultery in our Book to be stoning (rajm), but when it became frequent among our nobles, we would let them go. However, when it occurred among the weak, we would enforce the punishment upon them. So we decided to create something that could be applied to both the noble and the weak alike. Thus, we agreed upon flogging and blackening the face as a substitute.' Upon hearing this, the Messenger of Allah (peace and blessings be upon him) declared: 'O Allah, I am the first to revive Your command after they had abolished it!'"<sup>10</sup>

In the narration of Al-Bara' (may Allah be pleased with him), their denial and their agreement upon a replacement which they attributed to Allah are both considered independent causes of disbelief. As for the issue of replacement and whether every form of replacement constitutes disbelief, this will be addressed in the third principle, Allah willing, along with a number of related matters.

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<sup>10</sup> Musnad Ahmad Al-Risalah: 30/490.

## The Third Principle: Is Every Replacement Disbelief? Is Every Law Disbelief? Is Every Legislation Considered Disbelief?

### 1. Replacement (Tabdīl)

**Linguistically:** Ibn Faris (may Allah have mercy on him) said:

الباء والداد واللام أصل واحد، وهو قيام الشيء مقام الشيء الذاهب، يُقَالُ: هَذَا بَدَّلُ الشَّيْءِ وَبَدِيلُهُ. وَيَقُولُونَ بَدَّلْتُ الشَّيْءَ: إِذَا غَيَّرْتُهُ وَإِنْ لَمْ تَأْتِ لَهُ يُبَدَّل. قَالَ اللَّهُ تَعَالَى.

"The root letters (Bā, Dāl, and Lām) form a core meaning, which is the substitution of one thing in place of another that has departed. It is said: 'This is the substitute (badal) of something and its alternative (badīl).' It is also said: 'I replaced (baddaltu) something' when one changes it, even if no alternative is provided. Allah Almighty said:

﴿قُلْ مَا يَكُونُ لِي أَنْ أُبَدِّلَهُ مِنْ بَلْقِي تَقِي﴾ [سورة يونس: ١٥]

'Say: It is not for me to replace it of my own accord.' (Surah Yunus: 15)

وَأُبَدِّلُهُ: إِذَا أَتَيْتُ لَهُ بِبَدَلٍ.

And 'I substituted (abdalatuhu) something' means I provided an alternative in its place."<sup>11</sup>

**Legally (Shar'an):** It is the alteration of a Sharia ruling with another ruling, either through speech or action.

**Types:** Not every form of replacement (tabdīl) constitutes disbelief. Allah mentioned in Surah Al-Fath an action by the hypocrites that He described as replacement, referring to their attempt to join the Prophet (peace and blessings be upon him) in one of the expeditions after having previously refused to go with him. Because they had previously stayed behind and abandoned the Muslims, Allah forbade them from going with him again, yet they insisted on joining for the sake of spoils of war.

Allah says:

سَيَقُولُ الْمُخَلَّفُونَ إِذَا انطَلَقْتُمْ إِلَى مَغَائِمٍ لِنَأْخُذُوهَا دَرُونَا نَتَّبِعْكُمْ يُرِيدُونَ أَنْ يُبَدِّلُوا كَلِمَ اللَّهِ قُلْ لَنْ تَتَّبِعُونَا كَذَلِكُمْ قَالَ اللَّهُ مِنْ قَبْلُ فَسَيَقُولُونَ بَلْ تَحْسُدُونَنَا بَلْ كَانُوا لَا يُفْقَهُونَ إِلَّا قَلِيلًا ١٥

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<sup>11</sup> Maqayis Al-Lugha by Ibn Faris (2/210).

"Those who lagged behind will say, when you set out to take spoils, 'Let us follow you.' They wish to change (yubaddilū) the word of Allah. Say: 'You shall not follow us. Thus has Allah said before.' Then they will say: 'You only envy us.' Rather, they understand but little." (Surah Al-Fath: 15)

قال مقاتل بن سليمان في تفسير الآية: سيقول المخلفون عن الحديبية مخافة القتل إذا انطلقتم إلى مغامرتهم لتأخذوها يعني غنائم خيبر ذرونا نتبعكم إلى خيبر، وكان الله تعالى - وعد نبيه - صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ - بالحديبية أن يفتح عليه خيبر، ونهاه عن أن يسير معه أحد من المتخلفين فلما رجع النبي - صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ - من الحديبية يريد خيبر قال المخلفون: رجع ذرونا نتبعكم فنصيب معكم من الغنائم. فقال الله تعالى: ﴿يُرِيدُونَ أَنْ يُبَدِّلُوا كَلِمَ اللَّهِ﴾ [سورة الفتح: ١٥] يعني أن يغيروا كلام الله الذي أمر النبي - صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ - ، وهو ألا يسير معه أحد منهم ﴿قُلْ لَنْ تَتَّبِعُونَا كَذَلِكَ﴾ [سورة الفتح: ١٥] يعني هكذا قال الله بالحديبية من قبل خيبر أن لا تتبعونا فسيقولون للمؤمنين إن الله لم ينهكم بل تحسدونا بل منعكم الحسد أن نصيب معكم الغنائم، ثم قال بل كانوا لا يفقهون إلا قليلاً .

Maqatil ibn Sulayman, in his interpretation of this verse, said: "The ones who lagged behind at Hudaibiyyah, out of fear of being killed, will say "They set out to take spoils," meaning the spoils of Khaybar, and they said, "Let us follow you to Khaybar." Allah Almighty had promised His Prophet (peace and blessings be upon him) at Hudaibiyyah that He would grant him victory over Khaybar and had forbidden him from allowing any of those who had lagged behind to accompany him. When the Prophet (peace and blessings be upon him) returned from Hudaibiyyah with the intention of heading to Khaybar, those who had lagged behind said, "Let us follow you so that we may gain a share of the spoils." Allah said: "They wish to change the word of Allah." (Surah Al-Fath: 15), meaning they sought to alter the command of Allah, which had been given to the Prophet (peace and blessings be upon him), forbidding any of them from joining him. "Say: 'You shall not follow us.' Thus has Allah said before." (Surah Al-Fath: 15), meaning, this was already decreed by Allah at Hudaibiyyah before the conquest of Khaybar, that they should not follow. "Then they will say to the believers, 'Allah did not forbid you, rather you envy us.'" They would claim that envy was the only reason the believers prevented them from sharing in the spoils. Allah then said: "Rather, they understand but little."<sup>12</sup>

In this context, we will discuss various forms of legislative replacement and unjust rulings that the Salaf did not consider as major disbelief, and we will differentiate them from those replacements that do constitute disbelief, Allah willing. Many unjust rulers and judges under the Umayyads issued rulings contrary to what Allah had revealed, yet these were considered disbelief below disbelief and wickedness below wickedness, as stated by Ibn Abbas and his students, such as Ata' and Tawus, among others. Among these instances was when a judge would rule according to his best knowledge in a case, yet errors could occur, and for this, Umar (may Allah be pleased with him) used to caution and oversee governors and judges. Another example is when a thief was brought before a judge, and the ruling was altered on grounds that the stolen amount had not reached the threshold of a quarter dinar or that the thief had a claim of ownership, such as having taken from his father's wealth.

All these cases, may Allah protect us and you, prevent the application of the hadd punishment of amputation on the thief. In such instances, the judge alters the ruling of Allah by changing the form of

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<sup>12</sup> Tafsir Muqatil (4/72).

judgment, but he does not reject, deny, or nullify Allah's law, nor does he fall into an act of disbelief, as previously discussed.

One of the most well-known examples of unjust judges was Bilal ibn Abi Burdah, the judge of Basra during the governorship of Khalid ibn Abdullah al-Qasri. He was notoriously oppressive, imprisoning people without legitimate accusations to serve his own interests, favoring his associates in judgments, and ruling unjustly based on the intercessions of Governor Khalid.

Among the accounts regarding him is one reported by Muhammad ibn Khalaf, known as Waki', in Akhbar al-Qudat:

وحدثني العباس بن محمد بن عبد الرحمن بن عثمان أبو الفضل الأشهلي قال حدثني أبي، قال: حدثنا أبو زيد الأنصاري سنة إحدى ومائتين؛ قال: كان في المسجد رجل أحسبه ابن أبي علقمة، فلما ولي بلال بن أبي بردة أرسل إليه، فلما وقف بين يديه قال له ابن أبي بردة يا ابن أبي علقمة أتدري لم أرسلت إليك؟ قال: لا، قال: أرسلت إليك؟ لأسخر بك؛ فقال له ابن أبي علقمة لنن قلت ذلك لقد سخر أحد الحكمين بصاحبه؛ قال: فلعله ابن أبي بردة، وأمر به إلى الحبس، فمكث فيه أياماً.

He narrated from Al-'Abbas ibn Muhammad ibn 'Abd al-Rahman ibn 'Uthman Abu al-Fadl al-Ashhali, who said: My father told me, saying: Abu Zayd al-Ansari narrated to us in the year 201 AH. He said:

"There was a man in the mosque, whom I believe to be Ibn Abi 'Alqamah. When Bilal ibn Abi Burdah was appointed as judge, he summoned him. When Ibn Abi 'Alqamah stood before him, Ibn Abi Burdah said: 'O Ibn Abi 'Alqamah, do you know why I summoned you?' He replied: 'No.' Ibn Abi Burdah said: 'I summoned you to mock you.' Ibn Abi 'Alqamah replied: 'If you say that, then indeed, one of the two arbitrators has mocked the other.' Upon hearing this, Ibn Abi Burdah cursed him and ordered that he be imprisoned, where he remained for several days."<sup>13</sup>

Another report about him states:

أخبرني عبد الله بن الحسن بن النعميري، عن محمد بن أيوب، عن عقيل، قال: أمر بلال بن أبي بردة داود بن أبي هند أن يحضره عند تقدم الخصوم إليه فإنه حكم بخطأ رمى بحصاة ليرجع، وكان داود يفعل، فإذا أخطأ رمى بحصاة ليرجع بلال عن خطئه، وينظر حتى يصيب، فتقدم إليه مولى له ينازع رجلاً، فحكم لمولاه، ظلماً، فرمى داود بحصاة، فلم يرجع ثم عاد فرمى بحصاة حتى رمى بحصياته، فقال له بلال قد فهمت ما تريد، ولكن ليس هذا مما له بالحصى هذا يرمي مولاي

'Abdullah ibn al-Hasan narrated from al-Numayri, from Muhammad ibn Ayyub, from 'Aqil, who said:

"Bilal ibn Abi Burdah ordered Dawud ibn Abi Hind to be present whenever he presided over disputes. If he passed an incorrect judgment, he would throw a pebble as a signal for him to correct his mistakes, watching until he got the ruling right. One day, a servant of his came to him with a dispute against another man. Bilal ruled unjustly in favor of his servant, and Dawud threw a pebble as a signal for him to

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<sup>13</sup> Akhbar al-Qudat by Waki' al-Maraghi (2/29-30).

reconsider his ruling, but he did not retract it. Dawud threw another pebble and then another until he had thrown all his pebbles. Bilal then said to him: "I understand what you mean, but this case is not one where pebbles apply; this involves my servant."<sup>14</sup>

Waki' summarizes his condition by saying:

وكان بلال ظلوما، ما يبالي ما صنع في الحكم وغيره

"Bilal was unjust; he did not care about what he did in judgment or otherwise."<sup>15</sup>

Among those who became notorious for injustice and accepting bribes in rulings during the Abbasid era was Judge al-'Umari. One of the controversial rulings for which he was criticized was converting a group of Copts into Arabs, which, according to Islamic teachings, falls under minor disbelief (kufr asghar). This is based on the hadith narrated by Abu Bakr:

كفر بالله تبرؤ من نسب وإن دق، كفر بالله ادعاء إلى نسب لا يعرف

"Disavowing one's lineage, no matter how insignificant, is disbelief in Allah. Claiming a lineage one does not belong to is disbelief in Allah."<sup>16</sup>

Despite this, none of the scholars of that time declared him a disbeliever, as his action was considered disbelief below disbelief (kufr dūna kufr). Al-Kindi recorded in his book that prominent scholars of the time, such as 'Abdullah ibn Wahb and Sa'id ibn Abi Maryam, testified against him.

روى أبو عمر الكندي عن ابن بكير، قالاً : فأمر البكري بإقامة البينة عنده، فحضر أهل مصر، منهم: عبد الله بن وهب، وسعيد بن أبي مريم، وسعيد بن عفير، وناس كثير من أهل القناعة والعدالة فشهدوا عند البكري أن أهل الحرس من القبط، وأن العمري قضى فيهم بجور، فنقض البكري قضية العمري فيهم، وأشهد على قضائه بردهم إلى أصلهم من القبط»

Abu 'Umar al-Kindi narrated from Ibn Bukayr, who said: "Al-Bakri ordered the presentation of evidence before him. Many people from Egypt attended, including 'Abdullah ibn Wahb, Sa'id ibn Abi Maryam, Sa'id ibn 'Ufair, and many others."

The people of integrity and justice testified before Al-Bakri that the guards were originally from the Copts and that Judge Al-'Umari had ruled unjustly regarding them. Al-Bakri overturned his ruling and officially restored them to their original status as Copts.

Yahya Al-Khawlani composed the following verses on the matter:

<sup>14</sup> Akhbar al-Qudat by Waki' (2/36).

<sup>15</sup> Akhbar al-Qudat (2/36).

<sup>16</sup> As-Sunnah by Al-Khallal (2/120, no. 1466).

أشكروا الله على إحسانه ... فله الحمد كثيرا والرغب  
رجع القبط إلى أصلهم ... بعد خزي طوقه وتعب  
و دنائير رشوها قاضيا ... جائزا قد كان فينا يغتصب  
أخذ الأموال منهم خدعة ... وتولى عنهم ثم هرب  
أبلغ البكري عني أنه ... عادل في الحكم فراج الكرب  
قد أمات الجور فينا والرشا ... وأشاع العدل فينا فرتب  
إنه قد كان يقضي بالهوى ... ويبيع الحكم جورا ويهب  
وإذا خلوا حساها مزة ... مثل عين الديك من ماء العنب  
لم يعن عاصرها في كرمها ... بسوى القطف وغمزا بالركب  
فأنت كالشمس إلا أنها ... كسيت في دنها لون ذهب  
ما كفته رشوة ظاهرة ... وقضايا جوركم فيها عجب  
أن أتى أعظم ما يأتي به ... أحد أن صير را القبط عرب

"Give thanks to Allah for His grace,  
For Him is much praise and all hope.  
The Copts have returned to their roots,  
After disgrace they endured and toil they bore.

Gold coins bribed an unjust judge,  
Who unlawfully took from us before.  
He deceived them and took their wealth,  
Then turned away from them and fled the door.

Tell Al-Bakri from me a word,  
He is just in judgment and cleared the grief.  
He has abolished oppression and bribes,  
And spread fairness in ordered relief.

For he (Al-'Umari) ruled by mere desire,  
Selling justice for favors to give.  
And when he drank, its taste was sharp,  
Like a rooster's eye, from a grape's press sieve.

No hands squeezed it in its vineyard,  
Only a firm press and knees that heave.  
It shone like the sun yet was draped in gold,



From its cask its shimmer deceives.

No bribe sufficed his open greed,  
And the judgments he passed were wonders indeed.  
To commit the gravest of deeds,  
None had ever done before,  
To turn Copts into Arabs by force."<sup>17</sup>

Among the cases that fall under the category of replacing the ruling of Allah, yet are considered disbelief below disbelief (kufr dūna kufr), is bias in judgment. This occurs when a judge listens to one party but refuses to hear the other, thereby depriving one litigant of their right and passing judgment from a one-sided perspective. Allah says:

وَإِنْ تَلَوْا أَوْ تَعْرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا ۝ ١٣٥

"And if you distort your testimony or refuse to give it, then indeed, Allah is fully aware of what you do."  
(Surah An-Nisa: 135)

The scholars of exegesis have differed regarding its interpretation; some applied it to judges, while others applied it to witnesses. In this regard, At-Tabari narrated from Ibn Abbas regarding the verse

وَإِنْ تَلَوْا أَوْ تَعْرَضُوا [سورة النساء : ١٣٥]

"And if you distort or turn away..." (Surah An-Nisa: 135), saying:

هُمَا الرَّجُلَانِ يَخْلِسَانِ بَيْنَ يَدَيِ الْقَاضِي، فَيَكُونُ لِي الْقَاضِي وَإِعْرَاضُهُ لِأَحَدِهِمَا عَلَى الْآخَرِ

"It refers to two men sitting before a judge, and the judge's distortion or disregard toward one in favor of the other."<sup>18</sup>

Many other reports explain these verses in relation to witnesses, including another narration from Ibn Abbas, who said:

تَلَوِي لِسَانِكَ بِغَيْرِ الْحَقِّ، وَهِيَ اللَّحْجَةُ، فَلَا تُقِيمُ الشَّهَادَةَ عَلَى وَجْهِهَا. وَالْإِعْرَاضُ التَّرْكُ

"It means to twist your tongue away from the truth, which is a form of stuttering in speech, thereby failing to establish testimony properly. 'Turning away' means neglecting it entirely."<sup>19</sup>

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<sup>17</sup> Al-Wulat wa Kitab al-Qudat by Al-Kindi, edited by Muhammad Hasan and colleagues, p. 297.

<sup>18</sup> Tafsir At-Tabari (7/589).

<sup>19</sup> Tafsir At-Tabari (7/590).

Despite the widespread occurrence of such actions among judges during the Umayyad era, the Salaf did not declare them disbelievers, even though such rulings were contrary to what Allah had revealed. A well-known example of this is found in the story of the Tabi'i Abu Mijlaz Laḥiq ibn Ḥumayd, when some Khawarij came to him and recited the verses from Surah Al-Ma'idah, saying:

وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ ٤٤

"And whoever does not judge by what Allah has revealed—then it is they who are the disbelievers."  
(Surah Al-Ma'idah: 44)

He responded:

قَالَ: نَعَمْ. قَالُوا: ﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ﴾ [سورة المائدة : ٤٥] قَالَ: نَعَمْ. قَالُوا: فَهَؤُلَاءِ يَحْكُمُونَ بِمَا أَنزَلَ اللَّهُ. قَالَ: نَعَمْ هُوَ دِينُهُمُ الَّذِي بِهِ يَحْكُمُونَ وَالَّذِي بِهِ يَنْكَلُمُونَ وَإِلَيْهِ يَدْعُونَ فَإِذَا تَرَكَوْا مِنْهُ شَيْئًا عَلِمُوا أَنَّهُ جَوْرٌ مِنْهُمْ إِنَّمَا هَذِهِ الْيَهُودُ وَالنَّصَارَى وَالْمُشْرِكُونَ الَّذِينَ لَا يَحْكُمُونَ بِمَا أَنزَلَ اللَّهُ.

"Yes." They then said: "And whoever does not judge by what Allah has revealed—then it is they who are the wrongdoers." (Surah Al-Ma'idah: 45) He replied: "Yes." They then asked: "So are these rulers judging by what Allah has revealed?" He said: "Yes, it is their religion, by which they rule, speak, and to which they call others. If they leave something from it, they know it is wrongdoing on their part. However, these verses refer to the Jews, Christians, and polytheists, who do not rule by what Allah has revealed."<sup>20</sup>

A more detailed discussion on the distinction between the different types of ruling by other than what Allah has revealed will follow, Insha'Allah. This may have various motivations, such as favoritism towards relatives or accepting bribes. At-Tabarani narrated from Masruq:

قَالَ: سَأَلْتُ ابْنَ مَسْعُودٍ، عَنِ الرَّشَا فِي الْحُكْمِ؟ قَالَ: ذَلِكَ الْكُفْرُ

"I asked Ibn Mas'ud about taking bribes in judgment, and he said: 'That is disbelief (kufr).'"<sup>21</sup>

Describing actions that do not take a person out of Islam has parallels in the statements of the Companions, such as what was narrated from Ibn Tawus, from his father, who said: "Ibn Abbas was asked about a man who has intercourse with his wife in her rear, and he replied: 'This man is asking me about disbelief (kufr)?"<sup>22</sup>

<sup>20</sup> Ad-Durr al-Manthur (3/88).

<sup>21</sup> Al-Tabarani (9/226).

<sup>22</sup> Musannaf 'Abd ar-Razzaq (1/453).

Abu 'Ubayd (may Allah have mercy on him) clarified that one of the linguistic formulations that indicate minor disbelief (kufr asghar) is when certain major sins are labeled as kufr without meaning disbelief that removes one from Islam. He said:

ومن النوع الذي فيه تسمية الكُفر:..

"Among the cases where the term kufr is used..., " he cited, for example, the statement of the Prophet (peace and blessings be upon him):

"لَا تَرْجِعُوا بَعْدِي كُفْرًا يَضْرِبُ بَعْضُكُمْ رِقَابَ بَعْضٍ"

'Do not revert to being disbelievers after me by striking the necks of one another.' And his saying:

"مَنْ قَالَ لِصَاحِبِهِ كَافِرٌ فَقَدْ بَاءَ بِهِ أَحَدُهُمَا"

'Whoever says to his brother "You are a disbeliever," then one of them has fallen into it.'" He mentioned several similar examples. May Allah have mercy on him. Refer to Al-Iman by Abu Ubaid (p. 72).

### Important Note:

Some people may question: If this kind of replacement (tabdīl)—which does not involve rejection, denial, or opposition to Allah's Sharia—does not change the form of the ruling but rather replaces it with a different punishment, such as when a thief is imprisoned instead of having his hand cut off, or when a judge simply releases him without punishment, would this constitute disbelief on the part of the judge?

The answer is that as long as the action does not involve rejection, denial, prohibition, or falsely attributing the replacement to Allah, it does not constitute an act of disbelief. The previously established conditions for what constitutes disbelief do not apply in such cases. If a thief is imprisoned without rejecting the ruling of Allah on theft, or if he is pardoned without denying or criminalizing Allah's ruling, then this does not fall under a disbelief-causing act (mukaffir). Some of these actions occurred during the Umayyad era, yet the Salaf did not declare those involved as disbelievers.

However, if such actions are issued by a judge of a Tāghūt sharia, the principle of determining the ruling must first be clarified, as the saying goes: "Get the foundations right before adding the details." If a Tāghūt judge enforces a punishment that is not from Sharia but is also not based on rejecting or criminalizing Allah's Sharia, then there is no established cause of disbelief (mukaffir) that would allow us to declare takfir because of it. There is no difference in this ruling whether it is issued by a ruler who follows Islam and bases his rulings on the Sharia or by a Tāghūt judge who follows a sharia that opposes the Sharia of Allah.

For this reason, emphasis was placed on defining the Tāghūt sharia in the first principle, and the Sunni monotheist should be aware of this distinction. Nevertheless, this does not mean we introduce

unnecessary leniencies in judgment, as this discussion is one of knowledge and precise classification. Furthermore, it is essential to remember that the Salaf forbade seeking judgment from the Jahmiyyah, even when they ruled by the divinely revealed Sharia—so what should be said about those who rule by infractions that are disbelief lesser than disbelief?

## 2. The Term "Law" (Qānūn)

**Linguistically:** Al-Jawhari states:

والقوانين: الأصول الواحد قانون، وليس بعربي

"Qawānīn" means principles or foundations; the singular is qānūn, and it is not an Arabic word."<sup>23</sup>

The term refers to any text that establishes or defines a particular field of study, forming a general or specific rule that governs a set of concepts related to that subject. A law may pertain to legislation concerning halal and haram, obligations, and legal punishments (hudud), or it may relate to administrative regulations or traffic rules, which are not directly connected to matters of halal, haram, or religious obligations.

This term, originally Greek, was introduced into the Islamic world early on and became widely used in the Abbasid administration. For instance, As'ad ibn Mamati authored a book titled "Qānūn ad-Dawāwīn" (The Law of Government Offices), detailing state administrative regulations. Similarly, other administrative terms of non-Arabic origin became common, such as "Awraj" (meaning transported goods) and "Ruznamaj" (meaning a daily record book).

Al-Khwarizmi further explains this usage, stating:

قانون الخراج أصله الذي يرجع إليه وتبنى الجباية عليه وهي كلمة يونانية معربة

"Qānūn al-Kharāj (Land Taxation Law) is the foundational principle upon which taxation is referenced and based." He clarifies that the term is originally Greek but was later Arabized.<sup>24</sup>

Thus, the meaning of any given law should be examined based on its content, rather than automatically labeling every law as disbelief (kufr). This is a grave mistake that leads to excessiveness and extremism, and the Sunni monotheist should beware of it.

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<sup>23</sup> Al-Sihah (6/85).

<sup>24</sup> Mafatih al-'Ulum (p. 83).

### 3. Legislation (Tashrī')

The linguistic and technical definitions of legislation have already been discussed. What is important in this context is to clarify that legislation is a broad term, as previously mentioned. It refers to a clear methodology and includes any formulation and establishment of a set of general principles and rules.

Based on this broad definition, legislation is not limited to religious lawmaking (tashrī' dīyānī), which governs matters of halal, haram, obligations, and legal punishments. Rather, it can also encompass administrative regulations and organizational policies that govern the functioning of institutions and individuals within a structured system.

Furthermore, sports regulations also fall under this general definition of legislation. Various sports are governed by a set of rules and guidelines that players, coaches, and referees must follow. For example, referees have handbooks detailing:

- How to determine offside violations
- What actions to take when a player grabs an opponent's jersey
- How to judge a handball or shoulder contact when it is unclear
- What penalties to impose if a player excessively uses violence against an opponent

Would any rational person consider such regulations, even if called "legislation," to be acts of disbelief or Tāghūt legislations?! It is astonishing that some people declare takfir over trivial matters, such as referees issuing yellow or red cards when a player is injured or harmed.

Although this is not the place for an in-depth discussion on this serious misunderstanding, I will summarize the key resolution to this issue in two brief points that will clarify matters for those who have confused this issue, Insha'Allah. For those who wish to explore the topic further, Sheikh Abu Zayd has written three well-researched scholarly articles on the matter—may Allah reward him for his service to Islam and its people.

It should be understood that a referee is not a ruler of the Tāghūt sharia; he is not a judge issuing rulings based on disbelieving legislation. His role is limited to organizing and managing the game according to agreed-upon rules. When he issues colored warnings (yellow or red cards), it falls within his function of maintaining order and enforcing the rules of the game. He may warn a player once and expel another if excessive violence is used or if a player violates the established rules.

A referee does not prevent the involved players from seeking judgment from a Shari or Taghuti judge, nor does he prevent them from conciliation. His role ends with his whistle. In reality, there have been instances where injuries such as fractures and wounds occurred during games, and the injured parties sought judgment in civil courts after the game ended—courts unrelated to the governing body of the sport.

Thus, it is absurd and completely disconnected from proper knowledge for some to claim that official matches involve disbelief while informal neighborhood games do not.

Even if we assume that a referee forces an injured player to waive his right—which is not the case in reality—would that constitute an act of disbelief?! No scholar from the Salaf has ever made such a claim.

Similarly, if a tyrannical ruler were to force one of two disputing parties to relinquish their right or coerce them into a reconciliation, this action does not involve declaring forbidden matters as lawful, rejecting divine rulings, or criminalizing the Sharia.

For this reason, classical jurists discuss these issues in their books, cautioning that a Sharia judge should not coerce disputing parties into a reconciliation or pressure them excessively, as it should remain voluntary. However, they do not label such actions as disbelief (kufr)—so take note.

Even if a judge compels parties into a settlement, reconciliation itself is permissible, as long as it does not make lawful what is forbidden or forbid what is lawful. As Umar ibn Al-Khattab stated in his letter to Abu Musa:

والصلح جائز فيما بين الناس، إلا ما أحل حراماً، أو حرم حلالاً

"Reconciliation is permissible among people, except if it makes lawful what is forbidden or forbids what is lawful."<sup>25</sup>

A Sunni monotheist should not be shaken by terms such as legislation (tashrī'), law (qānūn), or replacement (tabdīl) but should instead examine their content and meaning. The key questions to consider are whether they involve:

- Declaring forbidden matters as lawful (istihlāl al-muḥarram),
- Rejecting or abolishing Allah's legislations, legal punishments (hudud), and obligations,

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<sup>25</sup> Akhbar al-Qudat (1/73).

- Or denying/criminalizing them.

These principles were previously explained in defining the Tāghūt sharia. Therefore, establish the foundation before carving the details—if a law or regulation does not contain a cause of disbelief, then on what basis would one declare it as disbelief?

What has become widespread among the Qutbis (a term referring to a specific ideological group) and others—that every law or legislation is disbelief (kufr)—is not a statement rooted in the narrations of the Salaf (early Muslims). In other words, it has no basis in the words of the Salaf if we properly conceptualize these emerging issues (nawazil) and then apply the narrations of the Salaf to them.

These contemporary terminologies may refer to permissible matters, such as traffic laws. What in the Sharia prohibits a Muslim ruler from establishing rules such as:

"Do not exceed a certain speed limit on this road."

"Do not make a U-turn at this intersection."

On the contrary, such regulations may serve to preserve human life, which is a recognized objective in Sharia.

Some laws may involve Sharia violations, such as unjust taxation or fines, but unless they involve rejecting Sharia or declaring the unlawful as lawful, they do not constitute disbelief. Similar issues occurred under Umayyad rulers, who imposed taxes (maks) unjustly. The Salaf condemned them, but did not declare them disbelievers.

And in the next principle, Insha'Allah, we will clarify how the Salaf differentiated between the Umayyads' innovation in imposing unjust taxes (maks) and Al-Hajjaj's act of declaring the collection of jizyah permissible (istihlāl).

Some of what is called legislation is indeed disbelief (kufr) because it meets some or all of the previously mentioned conditions of disbelief. Whoever enacts such legislation is a Tāghūt, and whoever judges by it or seeks judgment through it is a disbeliever likewise whoever is pleased with it, even if they are merely sitting in their own house; just as the Salaf ruled on the "Book of Legal Stratagems" (Kitāb al-Ḥiyal)—regarding whoever possessed it and approved of it, judged by it, or transported it from one city to another—and it contained matters of disbelief, as stated by Al-Nadr ibn Shumayl.<sup>26</sup>

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<sup>26</sup> Tarikh Bagdad (13/426).

The general lesson to be drawn from this principle is that not every infraction or transaction issued by a disbelieving ruler or his aides is itself an act of disbelief. Innovations (bid'ah) and sins remain within their respective categories regardless of who commits them, whether a Muslim or a disbeliever.

Moreover, one must not declare someone a disbeliever based on permissible matters, such as traffic laws or other regulatory measures, as some delusional individuals do—may Allah protect us.



## The Fourth Principle: How Did the Salaf Approach the Concept of Ruling by Other Than What Allah Revealed?

Dear monotheistic brother, understand the reason for revelation, reflect upon it, and consider how those who possessed true knowledge— the Companions and the Tabi'un (may Allah be pleased with them)— applied and interpreted it.

When one examines the Salaf's interpretation of the verse in Surah Al-Ma'idah regarding ruling by other than what Allah revealed, it becomes clear that they viewed it as a broad term and general description, similar to the judgments of pre-Islamic ignorance (ḥukm al-jāhiliyyah).

Ruling by other than what Allah has revealed is a judgment of ignorance (ḥukm jāhilī), and based on the reason for revelation (sabab an-nuzūl), it can be divided into two categories:

A ruling that constitutes disbelief (kufr) and takes one out of Islam, as the reason for revelation indicates that the verse was revealed concerning disbelievers—as stated by the Salaf (e.g., the Jews who rejected stoning and retribution).

A ruling that is disbelief lesser than disbelief (kufr dūna kufr) or wrongdoing lesser than wrongdoing (fisq dūna fisq), which does not expel a person from Islam.

Whoever meets the conditions of disbelief mentioned in the cause of revelation is a disbeliever (kāfir) and his ruling is Tāghūt. Hudhayfah (may Allah be pleased with him) said:

نِعْمَ الْإِخْوَةُ لَكُمْ بَنُو إِسْرَائِيلَ إِنْ كَانَتْ لَهُمْ كُلُّ مَرَّةٍ

"What excellent brothers they are for you if they get all the bitter parts, while you get all the sweet ones."

It is mentioned in Tafsir Muqatil that Ka'b ibn Al-Ashraf, Malik ibn Ad-Daif, Ka'b ibn Asayd, and their companions said:

لا نرضى بقضائك، ولا نطيع أمرك، ولنأخذن بالأمر الأول، فإنك عدونا، وما نألو أن تضعنا وتضرنا

"We do not accept your judgment, we will not obey your command, and we will return to our previous way, for you are our enemy and seek only to weaken and harm us."

Regarding this, Allah revealed:

أَفَحَكَمَ الْجَاهِلِيَّةُ يَنْعُونَ { [سورة المائدة : ٥٠ ]

“Do they seek the judgment of ignorance (ḥukm al-jāhiliyyah)?...” (Surah Al-Ma'idah: 50). Meaning: their former judgement.<sup>27</sup>

أخرج عبد الرزاق عن أبي البختري، قال: سأل رجلٌ حذيفةً عن هؤلاء الآياتِ {وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ} [المائدة: ٤٤] ، {فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] ، {فَأُولَئِكَ هُمُ الْفَاسِقُونَ} [آل عمران: ٨٢] ، قال: فقيل ذلك في بني إسرائيل؟ ، قال: «نعم الإخوة لكم بنو إسرائيل إن كانت لهم كل مرة ، ولكم كل حلو ، كلاً والله لتسلكن طريقهم قد الشراك»

Abd al-Razzaq narrated from Abu al-Bakhtari, who said:

"A man asked Hudhayfah about these verses:

'And whoever does not judge by what Allah has revealed—it is they who are the disbelievers.' (Surah Al-Ma'idah: 44)

'It is they who are the wrongdoers.' (Surah Al-Baqarah: 229)

'But whoever turns away after this—it is they who are the defiantly disobedient.' (Surah Aal 'Imran: 82)

He then asked: 'Were these verses revealed about Banu Israel?'

Hudhayfah replied: 'Yes, Banu Israel are indeed your brothers—if they had all the bitterness and you had all the sweetness. No, by Allah! You will certainly follow their path treading, exactly step by step (as precisely as the strap of a sandal follows the foot).'<sup>28</sup>

When one examines how the Salaf applied these verses, it becomes clear that, since the verses were general, they applied them to oppressive Muslim rulers and stated that their actions constituted disbelief lesser than disbelief (kufr dūna kufr).

The leading scholars of hadith established this principle in their works. Abu 'Ubayd, in his book Al-Iman, explained that the term shirk (polytheism) could be applied to sins that do not remove a person from Islam. The reason a person deserves to be described as having committed shirk or kufr is that he has

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<sup>27</sup> Tafsir Muqatil (1/480).

<sup>28</sup> Tafsir Abd al-Razzaq (2/20).

agreed with aspects of the pre-Islamic judgment (ḥukm al-jāhiliyyah)—thus, it is disbelief lesser than disbelief.

Abu 'Ubayd (may Allah have mercy on him) said:

فَقَدْ أَخْبَرَكَ أَنَّ فِي الذُّنُوبِ أَنْوَاعًا كَثِيرَةً تَسْمَى بِهَذَا الْإِسْمِ، وَهِيَ غَيْرُ الْإِشْرَاقِ الَّتِي يَتَّخِذُ لَهَا مَعَ اللَّهِ إِلَهَ غَيْرِهِ، تَعَالَى اللَّهُ عَنْ ذَلِكَ عَلَوًا  
وَأَمَّا كِبِيرًا، فَلَيْسَ لِهَذِهِ الْأَبْوَابِ عِنْدَنَا وَحْوُهُ إِلَّا أَنَّهَا أَخْلَاقُ الْمُشْرِكِينَ، وَتَسْمِيَتُهُمْ، وَسُنَنُهُمْ، وَالْفَاطَةُ، وَأَحْكَامُهُمْ، وَنَحْوُ ذَلِكَ مِنْ أُمُورِهِمْ  
الْفَرْقَانُ الشَّاهِدُ عَلَيْهِ فِي التَّنْزِيلِ، فَقَوْلُ اللَّهِ جَلَّ وَعَزَّ

"He has informed you that there are many kinds of sins that are called by this name (shirk), yet they do not constitute associating others with Allah (shirk), in which a deity other than Allah is worshiped—exalted is Allah above that! Rather, these matters are described as such because they are from the morals of the polytheists, their expressions, their traditions, and their rulings."

The criterion for distinguishing these cases is found in the Quran, as Allah says:

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾ [سورة المائدة: ٤٤] :

"And whoever does not judge by what Allah has revealed—it is they who are the disbelievers." (Surah Al-Ma'idah: 44)

Ibn Abbas said:

"لَيْسَ بِكُفْرٍ يَنْقُضُ عَنِ الْمِلَّةِ"

"It is not disbelief that removes one from the religion."

Ata' ibn Abi Rabah said:

كفر دون كفر

"It is disbelief lesser than disbelief."

فَقَدْ تَبَيَّنَ لَنَا أَنَّهُ (٦) كَانَ لَيْسَ بِنَاقِلٍ عَنِ مِلَّةِ الْإِسْلَامِ أَنَّ الدِّينَ بَاقٍ عَلَى حَالِهِ، وَإِنْ خَالَطَهُ ذُنُوبٌ، فَلَا مَعْنَى لَهُ إِلَّا أَخْلَاقُ (٧) الْكَفَّارِ  
وَسُنَنُهُمْ، عَلَى مَا أَعْلَمْتَكُمُ مِنَ الشِّرْكِ سِوَاهُ، لِأَنَّ مِنْ سُنَنِ الْكَفَّارِ الْحُكْمَ بِغَيْرِ مَا أَنْزَلَ اللَّهُ إِلَّا تَسْمَعُ قَوْلَهُ :

It has thus been made clear to us that this type of ruling does not take one out of the fold of Islam, as the religion remains intact despite the presence of sins. The only meaning left is that it contradicts the ways and traditions of the disbelievers, just as previously explained in the case of shirk. Among the customs of the disbelievers is ruling by other than what Allah has revealed. Do you not hear Allah's words:

"﴿أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ﴾ [المائدة: ٥٠]"

Do they seek the judgment of ignorance (ḥukm al-jāhiliyyah)?" (Surah Al-Ma'idah: 50)

تأويله عند أهل التفسير: أن من حكم بغير ما أنزل الله وهو على ملّة الإسلام كان بذلك الحكم كأهل الجاهلية؛ إنما هو أن أهل الجاهلية كذلك كانوا يحكمون.

According to the scholars of Tafsir, the interpretation of this verse is that whoever rules by other than what Allah has revealed, while still being upon Islam, is considered to be acting like the people of Jāhiliyyah—because this was their way of ruling.<sup>29</sup>

When Abu 'Ubayd (may Allah have mercy on him) said:

، فلا معنى له إلا أخلاق (٧) الكفار وسننهم

"The only meaning is that it contradicts the ways and traditions of the disbelievers," he meant that he was described by this name in order for him to differentiate himself from the disbelievers, as such actions are not from the actions of Muslims.

Ruling by other than what Allah has revealed is not the way of Muslims, whether it is by accepting bribes in judgment, twisting the law, being unjust, or ruling based solely on personal opinion without divine guidance—all of these are acts of Jāhiliyyah. So pay attention, my brother—may Allah protect you.

### Important Notice:

The Salaf did not declare the unjust rulers of the Umayyad era to be disbelievers, despite their imposition of certain unjust policies that fell under ruling by other than what Allah revealed, such as taxation (maks), oppression in governance, and accepting bribes in judgment.

However, the Khawarij declared oppressive rulers as disbelievers, believing that simply committing these violations—ruling by other than what Allah revealed and engaging in acts of Jāhiliyyah—was equivalent to equating themselves with Allah (shirk).

عَنْ سَعِيدِ بْنِ جَبْرِ ، فِي قَوْلِهِ تَعَالَى: ﴿وَآخَرُ مُتَشَابِهَاتٍ﴾ [آل عمران: ٧] قَالَ: "أَمَّا الْمُتَشَابِهَاتُ : فَهِنَّ آيَ فِي الْقُرْآنِ يَتَشَابِهَنَّ عَلَى النَّاسِ إِذَا قَرَأُوهُنَّ، مِنْ أَجْلِ ذَلِكَ يُضِلُّ مَنْ ضَلَّ مِمَّنْ ادَّعَى هَذِهِ الْكَلِمَةَ، كُلُّ فِرْقَةٍ يَقْرَأُونَ آيَاتَ مِنَ الْقُرْآنِ، وَيَزْعُمُونَ أَنَّهَا لَهُمْ أَصَابُوا بِهَا الْهُدَى وَمِمَّا تَنْبَغُ الْحُرُورِيَّةُ مِنَ الْمُتَشَابِهَةِ قَوْلَ اللَّهِ تَعَالَى: ﴿وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ﴾ [سورة المائدة: ٤٤] وَيَقْرَأُونَ مَعَهَا: ﴿

<sup>29</sup> Al-Iman by Abu 'Ubayd (p. 90).

ثُمَّ الَّذِينَ كَفَرُوا بِرَبِّهِمْ يَعْدِلُونَ ﴿١﴾ [سورة الأنعام: ١] فَإِذَا رَأَوْا الْإِمَامَ بِحُكْمٍ يُعَيِّرُ الْحَقَّ قَالُوا: قَدْ كَفَرَ، وَمَنْ كَفَرَ عَدَلَ بِرَبِّهِ فَقَدْ أَشْرَكَ فَهُوَ لَا إِلَهَ إِلَّا اللَّهُ مُشْرِكُونَ، فَيُحْزَنُونَ فَيَفْعَلُونَ مَا رَأَيْتُمْ؛ لِأَنَّهُمْ يَتَأَلَّوْنَ هَذِهِ الْآيَةَ

Said ibn Jubayr explained the Khawarij's flawed methodology in this matter and refuted their stance, saying:

"Regarding Allah's statement:

وَالْآخَرُ مُتَشَابِهَاتٌ ط

'And others are ambiguous (mutashabihat).' (Surah Aal 'Imran: 7)

"The ambiguous verses are those in the Qur'an that confuse people when they read them. Because of this confusion, those who make false claims are led astray by these words. Every sect recites certain verses from the Qur'an and claims they support their views, thinking they have attained guidance."

Among the mutashabih (ambiguous) verses that the Haruriyyah (Khawarij) misinterpret is the saying of Allah:

وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ ٤٤

'And whoever does not judge by what Allah has revealed—it is they who are the disbelievers.' (Surah Al-Ma'idah: 44)

They read it with another verse:

ثُمَّ الَّذِينَ كَفَرُوا بِرَبِّهِمْ يَعْدِلُونَ ١

'Then those who disbelieve equate others with their Lord.' (Surah Al-An'am: 1)

Thus, when they see a ruler judging unjustly, they say: "He has committed disbelief, and whoever disbelieves has equated something with his Lord, so he has committed shirk. Therefore, these rulers are polytheists!" Then they revolt and commit the acts you have witnessed, because they misinterpret these verses."<sup>30</sup>

For this reason, the Companions during the Umayyad era would reprimand the Khawarij for declaring unjust rulers to be disbelievers and condemned their corrupt methodology of baseless takfir.

<sup>30</sup> Al-Shari'ah by Al-Ajurri (1/341).

One example is Ibn 'Umar's encounter with some Khawarij, as narrated by Abd al-Razzaq.

أخرج عن أبي مجلز قال: كنت جالساً عند ابن عمر فدخل عليه رجل، فقال: يا أبا عبد الرحمن، ما الإشرāk بالله؟ قال: أن تجعل الله إلهاً آخر، فقال أيضاً يا أبا عبد الرحمن ما الإشرāk بالله؟ قال: أن تتخذ مع من دُون الله أنداداً، فقال أيضاً: يا أبا عبد الرحمن، ما الإشرāk بالله؟ فقال عمر: أخرج عليك إن كنت مسلماً عليك إن كنت مسلماً لما خرجت عني، فخرج الرجل، وغضب ابن عمر غضباً شديداً قال: ففُمتُ لما رأيْتُ من شدة غضبه لأخرج، فضرب بيدي على ركبتي فقال: اجلس؛ فأني أرجو أن لا تكون منهم قال: قلت: يا أبا عبد الرحمن، أتى المدينة طالب حاجة، فأقيم بها السبعة الأشهر والثمانية الأشهر، كيف أصلي؟ قال: صلي ركعتين ركعتين.

Abu Mijlaz reported:

"I was sitting with Ibn 'Umar when a man entered and asked:

'O Abu 'Abd al-Rahman, what is associating partners with Allah (shirk)?'

Ibn 'Umar replied: 'It is to set up another god besides Allah.'

The man asked again: 'O Abu 'Abd al-Rahman, what is shirk?'

Ibn 'Umar answered: 'It is to take rivals besides Allah.'

The man asked a third time: 'O Abu 'Abd al-Rahman, what is shirk?'

Ibn 'Umar replied to the man:

"I adjure you—if you are a Muslim, then leave my presence."

The man left, and Ibn 'Umar became extremely angry.

Abu Mijlaz continued:

"Seeing his intense anger, I stood up to leave, but he struck my knee with his hand and said: 'Sit down, for I hope that you are not one of them.'"

I then asked:

"O Abu 'Abd al-Rahman, if I go to Madinah seeking something and remain there for seven or eight months, how should I pray?"

He replied:

"Pray two rak'ahs, two rak'ahs."<sup>31</sup>

This innovation (bid'ah)—imposing unjust taxation (maks)—was among the first matters that the righteous Caliph 'Umar ibn 'Abd al-'Aziz sought to eliminate, as he ordered the burning of tax collection centers. Although it was a clear injustice, it was not considered a form of disbelief (tashrī' mukaffir).

The Khawarij, despite praising the just governance of this Umayyad caliph, still insisted on declaring his predecessors among the Umayyad rulers as disbelievers. However, 'Umar ibn 'Abd al-'Aziz clarified to them that these rulers were not disbelievers despite their injustices, and that violating the Sunnah is different from rejecting or opposing it.

This distinction is evident in his response to them:

The Khawarij asked:

قال: أو ما هم كفار بظلمهم؟

"Were they not disbelievers due to their oppression?"

'Umar ibn 'Abd al-'Aziz replied:

قال : لا لأنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دعا الناس فكان من أقر بالإيمان وشرائعه قبل منه، فإن أحدث حدثا أقيم عليه الحد،

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<sup>31</sup> Al-Musannaf (2/538).

"No, because the Messenger of Allah (peace and blessings be upon him) called people to faith, and whoever accepted it along with its laws was acknowledged. If they later committed an offense, the prescribed punishment was applied to them."

A Khariji then objected, saying:

فقال الخارجي: أن رسول الله صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ دعا الناس إلى التوحيد بالله والإقرار بما نزل من عنده والعمل بما والعمل بما سن من سنته، ولو قالوا نؤمن بما جاء من عند الله ونخالف سنتك ما قبل ذلك منهم.

"The Messenger of Allah (peace and blessings be upon him) called people to believe in Allah's oneness, to acknowledge what was revealed from Him, and to act according to His Sunnah. If they had said, 'We believe in what was revealed from Allah but we will oppose your Sunnah,' this would not have been accepted from them."

'Umar ibn 'Abd al-'Aziz responded:

فقال عمر: فليس أحد يقول لا أعمل بسنة رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَلَكِنْ القوم أسرفوا على أنفسهم على علم منهم بأن الذي أتوا محرم عليهم، ولكن غلب عليهم الشقاء

"No one says, 'I will not act according to the Sunnah of the Messenger of Allah (peace and blessings be upon him).' Rather, these people committed excesses against themselves while knowing that what they did was forbidden to them, but they were overcome by their misfortune."<sup>32</sup>

From 'Umar's argument with the Khawarij, it becomes clear that ruling by other than what Allah has revealed is a general category that is not exclusively limited to major disbelief (kufr akbar). Instead, it varies depending on its nature:

If it involves injustice and violations of Islamic rulings that do not entail rejecting Allah's rulings, legal punishments (hudud), or declaring the unlawful to be lawful, nor prohibiting what Allah has permitted, then it is classified as disbelief lesser than disbelief (kufr dūna kufr) and wrongdoing lesser than wrongdoing (fisq dūna fisq).

This is why many of the Salaf applied these verses to minor disbelief, as stated by:

Ibn Jurayj, narrating from 'Ata', who said:

جاء عن ابن جريج، عن عطاء، قال: كفر دون كفر، وظلم دون ظلم، وفسق دون فسق.

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<sup>32</sup> Ansāb al-Ashrāf by Al-Baladhuri (8/213-214).



"It is disbelief lesser than disbelief, wrongdoing lesser than wrongdoing, and wickedness lesser than wickedness."<sup>33</sup>

Tawus and Ibn Abbas also made similar statements, as Ibn Abi Hatim recorded that Ibn Abbas said:

عن طاوس وابن عباس فقد روى ابن أبي حاتم عنه أنه قال: ليس هو بالكفر الذي يذهبون إليه.

"It is not the type of disbelief that people think it is."<sup>34</sup>

However, the Salaf—reciters of the Qur'an and scholars alike—did not hesitate to declare the tyrant Al-Hajjaj a disbeliever when it reached them that he had permitted taking jizyah from those who had embraced Islam.

Among those who declared him a disbeliever were:

- Said ibn Jubayr
- Al-Sha'bi
- Al-Basri
- Tawus
- Ibrahim
- And others

The reason for this was that permitting the collection of jizyah from those who had accepted Islam was an act of declaring something lawful (istihlāl) that Allah had forbidden. The Salaf unanimously agreed that it is forbidden to take jizyah from a person who embraces Islam after having previously been a non-Muslim under dhimmah (protected status).

Pay close attention, may Allah protect you, to the legal distinction in this matter:

There is a fiqhi discussion about whether delayed jizyah payments (as debt) should still be required from someone who converts to Islam. The majority of scholars held that it is automatically canceled upon their acceptance of Islam, as Islam erases what came before it—a ruling found in the books of financial jurisprudence (kutub al-amwāl).

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<sup>33</sup> As-Sunnah by Al-Khallal (4/159).

<sup>34</sup> Tafsir Ibn Abi Hatim (4/1143).

The issue with Al-Hajjaj was that he explicitly deemed it permissible (istihlāl) to take jizyah from Muslims in general after they had embraced Islam. For this reason, the Salaf viewed him as one who believed in the Tāghūt.

Imam Ahmad recorded in his book Al-Iman that Tawus said:

يا أهل العراق أنتم تزعمون أن الحجاج مؤمن!

"O people of Iraq! You claim that Al-Hajjaj is a believer?"

Manṣūr narrated from Ibrahim:

قال : وقال منصور: عن إبراهيم: كفى به عم الذي يعمى عليه أمر الحجاج

"It is enough of a calamity that one is blind to the true nature of Al-Hajjaj."<sup>35</sup>

Similarly, Al-Sha'bi addressed this matter when he was asked to judge between Al-Ajlāḥ and 'Umar ibn Qays al-Māṣir in a dispute about Al-Hajjaj.

Al-Ajlāḥ said:

قال الأجلح: قال اختلفت أنا وعمر بن قيس الماصر في الحجاج فقلت أنا الحجاج كافر وقال عمر الحجاج مؤمن ضال

"I disagreed with 'Umar ibn Qays regarding Al-Hajjaj. I said, 'Al-Hajjaj is a disbeliever,' while 'Umar said, 'Al-Hajjaj is a misguided believer.'"

Then, we went to Al-Sha'bi, and I said:

قال فأتينا الشعبي فقلت يا أبا عمرو أني قلت أن الحجاج كافر وقال عمر الحجاج مؤمن ضال

"O Abu 'Amr! I said, 'Al-Hajjaj is a disbeliever,' but 'Umar says, 'Al-Hajjaj is a misguided believer.'"

Al-Sha'bi responded:

قال فقال الشعبي يا عمر شمريت ثيابك وحللت إزارك وقلت أن الحجاج مؤمن ضال قال فقال وكيف يجتمع في رجل إيمان وضلال الحجاج مؤمن بالجبت والطاغوت كافر بالله العظيم.

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<sup>35</sup> Kitab Al-Iman by Imam Ahmad, ed. 'Adil Al-Ghamdi (p. 125).

"O 'Umar! You have lifted your garment and loosened your belt, saying that Al-Hajjaj is a misguided believer! How can faith and misguidance exist together in a man? Al-Hajjaj is a believer in the Jibt and Tāghūt; a disbeliever in Allah, the Almighty!"<sup>36</sup>

To conclude this discussion, we cite a narration that summarizes the Salaf's understanding of the verse on ruling by other than what Allah has revealed and how they applied it depending on the context:

Allah says:

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾ [سورة المائدة : ٤٤]

"And whoever does not judge by what Allah has revealed—it is they who are the disbelievers." (Surah Al-Ma'idah: 44)

Ibn Abbas said:

قال ابن عباس : هو به كفر ، لا كفرا بالله وملائكته وكتبه

"It is disbelief (kufr), but not disbelief in Allah, His angels, and His books."

Al-Sha'bi said:

وقال الشعبي الأولي في المسلمين والثانية في اليهود والثالثة في النصارى

"The first (kufr) applies to Muslims, the second (wrongdoing) applies to the Jews, and the third (defiant disobedience) applies to the Christians."

وقال غيره من رد حكما من أحكام الله فقد كفر قلت وقد أجمعت الفقهاء على أنه من قال لا يجب الرجم على من زنى وهو محصن أنه كافر لأنه رد حكما من أحكام الله جل وعز ويروى أن حذيفة سئل عن هذه الآيات أهى في بني اسرائيل فقال نعم هي فيهم ولتسلكن سبيلهم حذو النعل.

"And others said:

Whoever rejects a ruling from the rulings of Allah has committed disbelief (kufr)."

I said: The jurists unanimously agreed that whoever says that stoning (rajm) is not obligatory for a married person who commits adultery is a disbeliever, because he has rejected a ruling from the rulings of Allah, the Almighty."

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<sup>36</sup> Tarikh Dimashq (12/187).

It is narrated that Hudhayfah was asked about these verses:

"Are they referring to Banu Israel?"

He replied:

"Yes, they apply to them, but you will certainly follow their path as closely as one sandal resembles another."<sup>37</sup>

Thus, Tawus, who said regarding the verse in Surah Al-Ma'idah,

ليس بكفر ينقل عن الملة

"It is not disbelief that removes one from the religion," was the same scholar who declared Al-Hajjaj to be a disbeliever, because Al-Hajjaj had declared lawful (istihlāl) what Allah had forbidden.

So understand the matter as the Salaf understood it, and apply it as they applied it—may Allah have mercy on you.

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<sup>37</sup> Ma'ani Al-Qur'an by Al-Nahhas (2/315).

## The Fifth Principle: Handling Some Complex Contemporary Issues

Ruling on a matter requires proper understanding of its reality. It is a grave error for a person to rush into issuing judgments on any issue or occurrence without fully comprehending it. One must first determine which category the matter falls under, how the Salaf handled similar issues, and what judgments they issued in such cases.

Abd al-Malik al-Maimuni narrated:

حدثنا الميموني، قال: قال لي أحمد بن حنبل: يا أبا، الحسن إياك أن تتكلم في مسألة ليس لك فيها إمام.

"Al-Maimuni reported that Imam Ahmad ibn Hanbal said to me: 'O Abu al-Hasan, beware of speaking on a matter for which you have no precedent from an Imam.'"<sup>38</sup>

As Imam Al-Shafi'i (may Allah have mercy on him) stated that knowledge consists of textual evidence and derivation (istinbāt).

Thus, issues that are contemporary (nawāzil) and difficult to compare directly to an established precedent should not be ruled upon without guidance from an earlier Imam—whether explicitly or through derivation from their methodology.

The meaning here is that one must either:

- Cite an established legal precedent (naql al-sabaq) when relying on a textual proof,
- Refer to the opinion of a qualified Imam, following it in taqlid (legal following), or
- Derive a ruling based on the methodology (usul) of the scholars in that matter.

For this reason, Ishaq (may Allah have mercy on him) narrated from 'Isa ibn Yunus, from Al-Awza'i, from Yahya ibn Abi Kathir, who said:

كان ابن عمر رَضِيَ اللَّهُ عَنْهُمَا إذا كان أمران أخذ بأوثقهما ، فإذا اختلفوا عليه سكت.

"When Ibn 'Umar (may Allah be pleased with him) was faced with two matters, he would choose the most reliable of them. If the scholars disagreed, he would remain silent."

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<sup>38</sup> Manaqib Al-Imam Ahmad (p. 245).

Then Ishaq added:

ثم قال إسحاق رَحِمَهُ اللهُ: فالاحتياط للمسلم الوقوف عند الشبهات نحو هذه العينات التي احتال الناس لها، أو الصرف حيث يدخلون بين الدنانير فضة، أو بين الدراهم ذهباً ليحلوا الحرام، والحيل لا تحل حراماً، ولا تحرم حلالاً. وكذلك كل ما أشبه ذلك من نحو المسكر والأشربة الخبيثة وما أشبهه مما تركنا فلم نصف فهو كما وصفنا

"The safest course for a Muslim is to avoid doubtful matters, such as the various financial tricks that people have devised, or currency exchanges where silver is secretly mixed with gold to justify forbidden transactions. Legal stratagems (hiyal) do not make the unlawful lawful, nor do they make the lawful unlawful. Similarly, this applies to intoxicants and other prohibited substances, as well as other ambiguous matters that we have not explicitly mentioned, but which share the same ruling."

وأما الشبهات: نحو [هذه] المسائل التي وصفنا يشتبهن على أهل العلم في الكتاب والسنة لما انقطع العلم فيها بأعيانها، ويحتاجون أن يشبهوا ذلك بالأصول الثابتة فلا يجدون إلى ذلك سبيلاً

"As for doubtful matters (shubuhāt)—such as the cases we have described, which confuse even scholars regarding their basis in the Qur'an and Sunnah—because knowledge of them in their specific details has been cut off. Scholars need to compare them to established principles, but they may not find a clear analogy."<sup>39</sup>

If you understand this, my monotheistic Sunni brother, then know that some issues related to legal judgment fall into this category of doubt and ambiguity. It requires the examiner to have a correct understanding of them before issuing a ruling. This means one must first have sound Islamic knowledge and then correctly conceptualize the cases in question.

To do so, one must research these legal cases in depth, examine the literature of these legal systems, understand their laws well rather than superficially, analyze the methods they use to rule on cases, and see what formulations they rely upon in their judgments. The key question is whether such a ruling contains a cause of disbelief, such as criminalizing the Sharia of Allah and rejecting it, as some do with polygamy, stoning, and other Islamic rulings. Or, is it simply a violation of the Islamic Sharia that does not constitute a cause of disbelief, such as financial penalties that do not override or replace an Islamic punishment but serve as discretionary measures in cases where Sharia has not prescribed a specific legal ruling?

If the matter falls into the latter category, then you must refer to the principles you have learned from the Salaf regarding the distinction between the laws of the Tāghūt and general legal infractions that constitute minor disbelief rather than major disbelief. This discussion does not concern purely administrative regulations, which are among the public interests and thus not classified as disbelief in any way.

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<sup>39</sup> Kitāb Masā'il al-Imām Aḥmad wa Iṣḥāq bin Rāhwayh (9/746-7).

And do not forget, my monotheist brother, that you have learned from what preceded that an infraction which the Sharia does not consider disbelief and does not take it out of the bounds of minor disbelief (kufr asghar) remains a disbelief without being outright disbelief, regardless of who commits it. If it is permissible, it remains permissible, whether issued by a Muslim ruler who adheres to the Islamic Sharia or by a ruler who adheres to a disbelieving sharia. Neglecting this important Salafi principle is what has led people to declare traffic laws as disbelief, even though it is clear to any rational person that they fall under the category of public interests (masalih mursala).

Thus, the matter is that you must first get the foundations right before adding the details, ensuring that the judgment is not driven by emotions. It is incumbent upon every monotheist (muwahhid) not to lean toward extremism when they see scholars criticizing those who dilute or are lax in their approach to the issue. Similarly, when they see scholars refuting the extremists and clarifying the matter, they should not dilute it and become lax themselves in addressing the issue.

# The Sixth Principle: Examples of Taghuti Legislation and Its Formulation in Ancient and Modern Times

## 1. Roman Legislation

Roman legislation was one of the earliest examples of kufr (disbelieving) formulations regarding the concept of freedom of belief, allowing individuals to adhere to any disbelieving religion they wished. The first to legislate this and implement it on the ground, mobilizing the empire's soldiers to protect it, was Constantine, the most famous of the Roman emperors. This was achieved through the issuance of what is known as the Edict of Milan in 313 CE. This edict granted freedom to followers of any religion to believe as they wished, particularly Christians, who were relieved from the persecution of previous emperors.

Constantine recognized Christianity—referred to by contemporary sources as "the Christian religion"—as one of the religions permitted to be practiced and observed within the empire, alongside paganism and Judaism. Among the key provisions of the edict was the following:

"We must grant to the Christians (and all others) the freedom to follow whatever religion each chooses, whether it be the religion of the Christians or any other that they deem most suitable for themselves... We have also granted full and equal freedom to non-Christians, as this concession is of utmost importance for the peace of our times."<sup>40</sup>

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<sup>40</sup> The History of the Byzantine Empire by Muhammad Muhammad Mursi Al-Sheikh, pp. 16-17.



## 2. The Legislation of Genghis Khan (Yasa- Yasaq)

This is the book of the Mongols, legislated by their king, Temujin, famously known as Genghis Khan, when he took command of the Mongols and Tatars and expanded his kingdom. He compiled rulings from various religious laws, including Jewish and Christian traditions, along with his own preferences. This book is a product of disbelief (kufr), and the Muslim ummah (community) has unanimously agreed that anyone who adheres to it or seeks judgment through it is a disbeliever. This is because its formulation is inherently disbelieving.

For example, it criminalizes the Islamic Sharia regarding the slaughtering of animals. The Mongols had a custom of cutting open the belly of a sheep or animal and extracting its heart. In this regard, Ibn Kathir quotes Fadlallah al-Juwayni, who lived during the era of Genghis Khan's descendants ruling over Persia and Iraq, from his book Jami' al-Tawarikh:

"Whoever slaughters an animal must be slaughtered in the same manner—they slit its belly and extract its heart with their hand, removing it from the body first."<sup>41</sup>

The evidence lies in his statement: "Whoever slaughters an animal must be slaughtered in the same manner." This legislation imposes the death penalty by slaughter for anyone who slaughters an animal, which can only stem from criminalizing and rejecting the act. Thus, they criminalize the Islamic method of slaughter. Al-Bara' ibn 'Azib reported that the Messenger of Allah (peace be upon him) said:

"Whoever faces our qiblah (direction of prayer), prays our prayer, and performs our sacrifice, let him not slaughter until he has prayed."<sup>42</sup>

Ibn Kathir also conveyed the consensus that whoever abandons the ruling of Allah and seeks judgment through this false sharia is a disbeliever in Allah the Almighty:

"In all of this, there is a contradiction to Allah's rulings revealed to His servants, the prophets (peace be upon them) and whoever abandons the precise and revealed Sharia given to Muhammad ibn Abdullah, the seal of the prophets, and seeks judgment through other abrogated shara'i (plural of sharia) has committed disbelief (kufr). So, what about those who seek judgment through the 'Yasaq' and prioritize it over divine law? Whoever does this has committed disbelief by the consensus of the Muslims."<sup>43</sup>

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<sup>41</sup> Al-Bidayah wa al-Nihayah by Ibn Kathir, edited by Al-Turki, 17/162.

<sup>42</sup> Mustakhraj Abi 'Awanah, published by Al-Ma'rifah, 5/71.

<sup>43</sup> Al-Bidayah wa al-Nihayah, 17/163.

### 3. Contemporary Constitutions

The Islamic Sharia, in the view of constitutionalists and secularists—as even legal academics themselves attest—is often marginalized.

Aboud Al-Sarraj, one of those well-versed in legal sciences and their foundations, speaks about the relationship between criminal law and religion:

"Throughout history, there have been many periods where actions were not considered crimes unless they contradicted religious teachings. However, after the separation of religion from the state, man-made legislation began to focus on achieving the interests of the state and society, regardless of religious rulings. The scope of criminalization in man-made law no longer necessarily aligns with the scope of criminalization in religions. A significant portion of this law remains consistent with religious principles, especially in major crimes such as murder, abortion, theft, fraud, forgery, rape, etc. However, on the other hand, there is another portion that does not align with religious principles, such as the failure to criminalize drinking alcohol, consuming blood, dead animals, and pork, as well as not criminalizing relationships between a man and a woman if they are consenting adults and unmarried, kissing a boy or a foreign woman, and the exposure of a woman's hair and body and the failure to criminalize certain actions related to worship, as well as the rejection of physical punishments such as stoning, amputation, flogging, crucifixion, etc."<sup>44</sup>

I say: Although this statement is very clear regarding the foundations of man-made laws and their rejection of divine rulings, as well as their explicit legalization of what Allah has prohibited, his statement: "A significant portion of this law remains consistent with religious principles, especially in major crimes such as murder, abortion, theft..." means, from our perspective as Ahl al-Sunnah (the Sunni tradition), the following:

The secular constitution, in its foundational principles and formulation, views the Islamic Sharia through two levels:

#### **Partial Agreement:**

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<sup>44</sup> Criminal Law by Aboud Al-Sarraj, pp. 36-37.

While it may align with the Islamic Sharia in prohibiting and condemning certain actions, such as unlawful killing, theft, and rape, it does not agree with the punishments prescribed by the Divine Legislator (Allah) for these actions. Instead, it rejects them, such as stoning, flogging, and others.

### **Complete Rejection:**

It outright rejects and contradicts some Islamic rulings, such as advocating for the freedom of religions, not obligating adherence to Islam as the only true religion, and failing to prohibit what Allah has forbidden, such as drinking alcohol, permitting illicit relationships, consuming dead animals, etc.

The legal scholar Aboud further emphasizes what we have stated by confirming that the state protects the freedom of religions and all associated rituals. He states: "In all cases, secular criminal law, despite its separation from religion, protects religions and guarantees the freedom to practice their rituals." He then supports this by citing articles from the Syrian Penal Code, such as Articles 462 and 463...<sup>45</sup> Since his book specifically addresses Syrian criminal law and penalties, it implicitly includes, without doubt, the rituals of the Nusayris, Batini sects, Rafidis, Husayni rituals, shrine worship, etc.

Before we examine some examples of the taghuti formulation of disbelieving laws, it is essential to understand that all contemporary secular constitutions grant themselves the authority to permit, prohibit, and criminalize. The system of punishments is fundamentally based on this disbelieving theory, as the right to permit and prohibit belongs solely to Allah, with no partner.

In this regard, the legal scholar Aboud explains the principle of legislating crimes and punishments:

"The prevailing principle today in the constitutions and laws of various countries is: The default status of things, actions, or statements is permissibility unless the law states otherwise. From this principle emerges the concept of the legality of crimes and punishments, or the principle: 'No crime and no punishment except by legal text.'"<sup>46</sup>

### **The Disbelieving Formulation in the Syrian Constitution and Its Laws:**

In the formulation of the Syrian Penal Code, Article 29 states: "No crime and no punishment except by legal text." At this point, some may ask: "Did we not previously establish that not every legislated punishment constitutes disbelief (kufr), even if it contradicts Islamic law?" I say to you: Yes, but we also established earlier in this chapter that the constitutional legislators of the Syrian Constitution or others grant themselves the authority to permit, prohibit, and criminalize. In other words, they only punish

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<sup>45</sup> General Penal Code by Aboud Al-Sarraj, p. 37.

<sup>46</sup> Penal Code by Aboud Al-Sarraj, p. 40.

what they consider a crime. Thus, the foundation of their legislation is inherently disbelieving, as it is based on their perspective of actions and their classification as crimes—whether affirmatively or negatively.

Affirmatively, they criminalize what Allah has permitted, such as disavowing polytheists, labeling it as extremism, for example.

Negatively, they fail to criminalize what Allah has prohibited, such as relationships between consenting, unmarried adults.

So, understand the depth of their legislation, may Allah guide you. What further confirms this is the statement of the legal scholar Aboud, who explains that a judge cannot impose a punishment except based on a constitutional text. It is not permissible for the judge to refer to religion or any other source, as doing so would itself be considered a crime and a violation:

"A judge may not assume an action to be a crime unless the law explicitly states so. This means that a judge may not base a conviction on social, moral, or religious rules. Therefore, the judge has no option but to rely on a legal text for conviction."<sup>47</sup>

## **2. The Disbelieving Formulation in the Egyptian Constitution and Its Laws:**

Article 53 of the Egyptian Constitution, under the section on Rights, Freedoms, and Public Duties, states: "Citizens are equal before the law. They are equal in public rights and duties & there is no discrimination among them based on religion, belief, or gender..."<sup>48</sup>

Notice the statement: "No discrimination among them based on religion or belief." This means that the Muslim, the Jew, the Orthodox Christian, the apostate Quburi, the Rafidi, or the Ash'ari are all equal—no distinction is made between them. They are united by the brotherhood of citizenship and a shared destiny. We have not yet added the secularist to those mentioned earlier, of course, because he is the foundation of the issue, and his religion is secularism. The constitution is built upon him and derives its legislation from him.

If you, my monotheist brother, understand secularism in its profound sense—which is the derivation of knowledge from the observable, material world without reference to any divine Sharia or unseen

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<sup>47</sup> Penal Code by Al-Sarraj, p. 41.

<sup>48</sup> Constitution of the Arab Republic of Egypt, Official Gazette, Issue 16 (bis), April 23, 2019, p. 24.

revelation<sup>49</sup>—you will understand why the secular constitution equates the Muslim and the disbeliever. This is because the creed of loyalty and disavowal (al-Wala' wal-Bara') is a revelation descended from the heavens, and they reject the unseen and religious legislation. When they return to their origin of deriving information, rulings, and teachings from the material world, they find concepts like international peace, religious tolerance, and other disbelieving ideas that contradict loyalty and disavowal in Islam.

Someone might say: "Yes, these false beliefs and concepts that nullify loyalty and disavowal—such as religious tolerance and citizenship—are undoubtedly disbelieving ideas in secular constitutions. But explain to me how they implement these rulings in their courts and how someone who seeks judgment through them becomes a disbeliever." I say to him: This is a valid question, and I will give you an example that explains the matter, Allah willing.

When a dispute occurs between two individuals—a Muslim or someone who identifies as Muslim and another person who is Ash'ari, a deviant regarding the names and attributes of Allah, the Ash'ari insults the monotheist (muwahhid) by calling him a "mujassim" (anthropomorphist). This leads to a physical altercation, and the monotheist strikes the Ash'ari. The Ash'ari then files a case in the constitutional court.

The judge, after reviewing the details of the case—meaning the assault occurred because the Ash'ari insulted the Sunni creed, and the monotheist insulted the Ash'ari's beliefs by declaring him a disbeliever—will rule based on laws that prohibit hatred and hostility toward citizens, who are considered equal in their view. This is because declaring someone a disbeliever (takfir) is considered a crime in their eyes, whether justified or not, as it incites hatred and hostility toward a fellow citizen (whom they call the "other," while we call them the "opponent").

The same principle applies if a Quburi or Ash'ari files a lawsuit against an author from Ahl al-Sunnah (the Sunni tradition) who, for example, declares Quburis and Ash'aris as disbelievers. This clarifies to you, my brother, the disbelief of those who seek judgment through laws based on disbelieving formulations. It also warns you against deviating from the way of the Salaf (early Muslims) in avoiding confrontation with opponents as much as possible and staying away from any clashes that might expose you to being summoned to disbelieving courts. There is no doubt that monotheists do not seek judgment from polytheists in their disbelief, and they strive to avoid it. May Allah protect us and you and grant us safety in this world and the hereafter.

The same article also states that discrimination and incitement to hatred are crimes punishable by law.<sup>50</sup>

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<sup>49</sup> Refer to the book *Secularism: The Plague of the Era* by Sami Ameri (may Allah rectify him), pp. 58-60.

<sup>50</sup> The Egyptian Constitution, p. 24.

This is their nullification of the creed of loyalty and disavowal (al-Wala' wal-Bara'). If you, my Muslim brother, show hostility toward a worshipper of al-Badawi or a worshipper of Sayyidah Zaynab, or an Ash'ari Al-Azhari atheist, or an Orthodox Christian, this is considered a crime punishable by Egyptian law—may Allah protect us.

In this regard, to avoid confusion caused by those who dilute Islamic principles, it is essential for the Sunni Muslim to understand that there is no tolerance for the disbeliever or any other religious group in their false beliefs. Yes, I may forgive the disbeliever or show him mercy by giving him charity, for example, and it is certainly forbidden for me to oppress him. However, the fundamental principle of hatred and enmity is always present. Allah Almighty says:

وَبَدَا بَيْنَنَا وَبَيْنَكُمْ الْعَدَاوَةُ وَالْبَغْضَاءُ أَبَدًا حَتَّىٰ تُؤْمِنُوا بِاللَّهِ وَحْدَهُ

"And there has appeared between us and you animosity and hatred forever until you believe in Allah alone." (Quran, Al-Mumtahanah: 4)

The creed of disavowal (al-Bara') from the disbeliever is abolished—indeed, it is considered a crime in the Egyptian constitution. This is one of the explicit disbelieving formulations based on the false secular ideology of religious freedom.

Article 74 of the Egyptian Constitution states: "Citizens have the right to form political parties by notification as regulated by law. It is not permissible to engage in any political activity or establish political parties based on religion... or to practice any activity opposed to the principles of democracy..."<sup>51</sup>

Beyond the statement that "citizens have the right to form political parties," the clause "it is not permissible to practice any activity opposed to democracy" glorifies the disbelieving concept of building states and their policies, known as "democracy," and criminalizes those who oppose it and declare it disbelief. Let me remind you, my monotheist brother, of the concept of democracy, which derives from the Greek words "demos" (people) and "kratos" (rule), meaning that sovereignty belongs to the people. In other words, the people are the source of legislation in determining what is permissible and what is forbidden, the legal punishments (hudud), and what should be glorified or criminalized—all sovereignty in rulings and legislation belongs to him (man) without referring to any legislation revealed by the Lord of the worlds. In fact, anyone who opposes democracy and declares it disbelief is considered a criminal in the religion of secularism, of which democracy is a branch.

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<sup>51</sup> The Egyptian Constitution, p. 31.

If you ask me how the people legislate rulings, I will say: They have organized this through representatives of the people, who are the members of parliament. In short, the parliament with its two chambers (the House of Representatives and the Senate) is the force that represents the people in the legislative authority, headed by the president, the government with its prime minister, and members of the constitutional council... These details are not as important to you, my monotheist brother, as understanding that the embodiment of the concept of democracy involves deifying the people, making them lords who can legislate what is permissible and forbidden, enact what they wish, and reject what they wish from religious rulings. All of this is embodied in reality through parliamentary or legislative elections to choose representatives and deputies for the people. What do they represent the people in? In legislating what is permissible and forbidden, and all rulings in every field.

Once you understand this, know that participating in parliamentary or presidential elections is an acknowledgment of taking lords besides Allah. And whoever seeks judgment through the constitution in matters related to this democratic concept is a disbeliever.

Understand, my brother, what relates to permitting the forbidden, forbidding the permissible, rejecting obligations, or disbelieving creeds—as we have explained in the concept of the taghuti sharia.

If we turn to the origin of the formulation of criminal and penal laws, the Egyptian constitution, like other taghuti (man-made) constitutions, it confirms the common principle of these constitutions: "No crime and no punishment except by legal text."

In fact, they begin with this principle as the foundation of the rule of law. The Egyptian legislator states: "The rule of law is the basis of governance in the state." Based on the previous explanation of democracy and the meaning of popular sovereignty, the rule of law is part of popular sovereignty. Thus, people, who are the source of all legislation, authority, and governance, have a dominant law that they approve of, prepared and codified by the constitutional elite representing the people. The people may vote in referendums on some of these laws, and many of them are accepted and approved by the people as a foundation. This is based on the theory of the social contract, though this is not the place to explain it. However, these concepts exist in the formulation and regulation of these constitutions, at least in some aspects and areas.

This democratic system of governance is a contract agreed upon by the ruler and the ruled. In fact, these peoples sacrifice their lives and blood to establish it, as evidenced by what is called "the Arab Spring."

Article 95 of the Egyptian Constitution states: "No crime and no punishment except by law..." Article 267 of the Egyptian Penal Code states: "Whoever commits an act of sexual intercourse with a female without her consent shall be punished by aggravated imprisonment." [Egyptian Penal Code]

Despite our prior knowledge that these constitutions do not criminalize consensual adultery if both parties are over the age of 18 and unmarried, as we saw in the Syrian penal law, this law, by counter implicature, also does not criminalize the described acts. In the case of non-consensual adultery with a female he is punished by harsh imprisonment (for years, but not life imprisonment). This punishment is disbelieving (kufr) because it is based on rejecting the hudud (prescribed punishments) and not recognizing the rulings of flogging and stoning, which are referred to in these constitutions as "physical punishments." They do not accept them, whether it is cutting off the hand or limbs for highway robbery, flogging, or stoning—all of this is rejected by them.

This law introduces the chapter on violating honor and corrupting morals, under which there are numerous punishments based on this disbelieving principle (rejecting physical punishments, i.e., the hudud)—we seek refuge in Allah.

We have previously warned that the concept of criminalization in this constitution and others contradicts the Islamic Sharia. In fact, it criminalizes what the Islamic Sharia commands and removes criminalization from what the Islamic Sharia prohibits. This is evident in the punishments and rulings, each according to its context, as we have mentioned earlier. For a punitive ruling to be taghuti (man-made and disbelieving), it must be formulated in a way that falls under the definition of the Taghuti sharia.

#### **A Pause with the Qutbi (a term referring to a specific ideological group):**

Let no ignorant Qutbi, dull in thought, come to a person who violated traffic laws and was fined by the Egyptian, Syrian, or other laws, and say: "This is a disbelieving ruling," arguing that these constitutions prohibit Islamic rulings, reject them, and do not believe in its hudud.

Okay, let us ask a question here: Do these constitutions prohibit all Islamic rulings? And does imposing a fine for violating some laws that fall under the category of "public interests" (al-masalih al-mursalah), where there is no prescribed punishment (hadd) or discretionary punishment (ta'zir) in the Islamic Sharia, constitute a rejection of this Islamic Sharia and a disbelieving legislation? Here, the dull Qutbi, if he has any sense, should stop and say, embarrassed: "Traffic laws in themselves are a modern matter, meaning they fall under the category of "emerging issues" (nawazil) in Islamic jurisprudence. The violations committed by drivers are varied. Some, such as exceeding a certain speed limit or not wearing a seatbelt, result in fines that are essentially discretionary punishments (ta'zir), whether issued by a disbeliever or a Muslim. So, where is the rejection of the Islamic Sharia, its criminalization, or the rejection of a prescribed punishment (hadd) that would make these financial penalties a basis for disbelief (kufr)?! None of this exists. If he has any sense, he will understand that this type of discretionary punishment could even be implemented by a Muslim ruler, as it falls under permissible ijtihad (juridical reasoning) and has no connection to the issue of takfir (declaring someone a disbeliever).



Unless this Qutbi has another burning Kharijite tendency, driven by a Haruri (Kharijite) principle: to declare the ruler a disbeliever, regardless of who he is, simply for enacting a specific measure that he sees as beneficial for the Muslims, even if it falls under matters that the Islamic Sharia has left open and allowed for ijihad. In other words, anything not explicitly legislated by the Sharia is considered disbelief (kufr). This is similar to what the Kharijites did with the Commander of the Faithful, Uthman (may Allah be pleased with him), when they declared him a disbeliever for designating specific grazing areas for the camels of zakat. He explained to them that this was an action preceded by Umar al-Farouq (may Allah be pleased with him) and that it was nothing more than a legitimate ijihad to serve the zakat and the Muslims.<sup>52</sup> He also clarified to them that they were applying verses revealed about the polytheists of Quraysh, who dedicated animals to idols (sawa'ib) and restricted the use of certain livestock (bahira), to the Muslims. There is no doubt that this was a flawed analogy that the Kharijites did not properly analyze or refine.

Therefore, when you return to the statement of Al-Dahhak regarding the reason for trolling, which we began our discussion with,<sup>53</sup> you will understand its depth and that it is a statement from a Companion, a narration (Athar). If the Haruri Qutbi reflects on it, it will open for him a door to cure his burning Haruri (Kharijite) tendencies.

### **3. The Polytheistic Formulation in the Tunisian Constitution and Its Laws:**

Like other man-made constitutions, the Tunisian legislation explicitly states that the state is secular, meaning it does not recognize religion as a governing authority. What the people approve is the source of legislation for what is permissible and forbidden. The people have the right to initiate rulings and judge matters by permitting, praising, condemning, or criminalizing them. This is because their laws, issued with their approval, have absolute sovereignty, dominance, and supremacy. The meaning of supremacy here is that no Sharia, not even the divine Sharia revealed by Allah—we seek refuge in Allah—can override them. By Allah, this is nothing but the same concept of Lordship (rububiyyah) that existed among the Children of Israel, but even worse. The Children of Israel might reject some rulings, but they do not criminalize them or impose punishments on those who follow them, unlike the Tunisian constitution, the legacy of Bourguiba and Ben Ali, the state of fierce secularism that Ghannouchi and the Muslim Brotherhood, the polytheists, patched together in the 2014 constitution.

In the second chapter of this taghuti constitution, Article 2 states: "Tunisia is a secular state, based on citizenship, the will of the people, and the supremacy of law."

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<sup>52</sup> Sahih Ibn Hibban, 4/184; Tarikh Khalifa, 1/169.

<sup>53</sup> Tafsir al-Tha'labi, 7/306.

Article 3 states: "The people are the holders of sovereignty and the source of authority, exercised through their elected representatives or by referendum."<sup>54</sup>

This is further reinforced by Article 31, which guarantees freedom of opinion, thought, and expression.<sup>55</sup>

The disbelieving formulation in this secular constitution is evident in Article 6, which explicitly adopts the disbelieving principles of freedom of belief and criminalizes takfir (declaring someone a disbeliever), even when justified, and threatens punishment for it.

This article states: "The state is the guardian of religion, guaranteeing freedom of belief, conscience, and religious practice..."

It also states: "The state is committed to spreading the values of moderation and tolerance, protecting sacred sites from violation, and preventing calls for takfir, incitement to hatred and violence, and confronting them."

This article abolishes the distinction between Muslims and polytheists, equating them in all rights, thereby nullifying the principle of loyalty and disavowal (al-Wala' wal-Bara') in Islam. In this taghuti (man-made) constitution, loyalty and disavowal are based on brotherhood in citizenship, not on the brotherhood of Islam and the Sunnah.

Article 21 states: "Male and female citizens are equal in rights and duties, and they are equal before the law without discrimination."<sup>56</sup>

The practical implications of these legal principles are evident in specific cases. As we have previously explained, disputes between a monotheist (muwahhid) and a secularist who attacks religion, or an Ash'ari who denies Allah's attributes, or a Quburi who commits shirk in worship, are resolved based on the disbelieving formulation that considers takfir—even when justified—a crime and incitement to hatred. The deviant Ash'ari, even if it is proven that he denies Allah's attributes, will be acquitted by the law under the principle of freedom of belief guaranteed by the taghuti legislation. The same applies to the Quburi (grave worshipper) and the secularist, who, like the Ash'ari and Jahmi, do not affirm a deity above the heavens.

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<sup>54</sup> The Tunisian Constitution issued in 2014, pp. 5-6.

<sup>55</sup> The Tunisian Constitution, p. 9.

<sup>56</sup> The Tunisian Constitution, p. 8.

Therefore, my brother, always be aware of the necessity of evaluating the disbelieving formulation of the law and the system of judgment. Any legislation that aligns with the definition of the taghuti sharia, as previously explained, constitutes Lordship (rububiyyah) besides Allah. Ruling by it or seeking judgment through it is disbelief in Allah, whether it comes from a disbeliever, increasing their disbelief, or from a Muslim, leading to their apostasy—we seek refuge in Allah.

As for matters that are merely infractions and not formulated in a disbelieving manner, whether issued by a disbelieving ruler of the taghuti sharia or a Muslim ruler, they constitute minor disbelief (kufr dun kufr).

Article 42 states: "The state protects cultural heritage and guarantees the rights of future generations to it."<sup>57</sup>

I say: Cultural heritage includes the restoration of polytheistic shrines and the supervision of polytheistic processions. The state may even deploy forces to protect them. This is based on the disbelieving formulation that promotes freedom of opinion and belief. Thus, the Quburi (grave worshipper) is guaranteed this right. If the inhabitants of a village or city inherit the practice of worshipping a shrine, it is framed as cultural and civilizational heritage, falling under the customs and traditions of the people of the country. If a monotheist or someone affiliated with Islam were to destroy it, they would be prosecuted and could face severe punishment.

We have limited our discussion to the disbelieving formulation of polytheistic and atheistic beliefs. As for the criminalization of what is permissible (halal) and obligatory (fard), such as prohibiting polygamy and legalizing forbidden acts (haram), although this is also disbelief and a disbelieving formulation—and seeking judgment through it constitutes disbelief—it is still less severe than legalizing shirk (polytheism) or permitting atheism—we seek refuge in Allah.

In conclusion, if a Sunni Muslim does not understand the issue at hand and refrains from passing judgment out of caution, this does not mean he is hesitant about the ruling of disbelief. Rather, he must not issue a judgment unless he fully understands the issue. Our discussion pertains to complex issues, not clear and evident matters. Whoever understands the context in which the Quran was revealed and follows the path of the righteous predecessors in applying the texts to each issue accordingly will, as Al-Dahhak (may Allah have mercy on him) said, not differ in any matter, Allah willing.

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<sup>57</sup> The Tunisian Constitution, p. 10.

I ask Allah, the Most Generous, by His beautiful names and lofty attributes, to make this summary purely for His sake and beneficial to those whom Allah wishes to guide.

*And may Allah send blessings and peace upon our Prophet  
Muhammad, his family, and his companions.*

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